

# COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 2009

THURSDAY, MARCH 6, 2008

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
*Washington, DC.*

The subcommittee met at 10:07 a.m., in room SD-138, Dirksen Senate Office Building, Hon. Barbara A. Mikulski (chairman) presiding.

Present: Senators Mikulski, Reed, Shelby, Stevens, and Brownback.

## DEPARTMENT OF COMMERCE

### SECRETARY OF COMMERCE

#### STATEMENT OF HON. CARLOS M. GUTIERREZ, SECRETARY

##### OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. The Subcommittee on Commerce, Justice, and Science will come to order. Today we are going to review the appropriations request at the Department of Commerce.

There will only be a single witness, it will be Secretary Gutierrez. And we want to note that this is Secretary Gutierrez's fourth appearance before the subcommittee, and this Chairperson wants to really say that we've had a very productive relationship with him and his team. It has been characterized by content-rich conversations, by candor, by civility—we think it's been a model of the way people, if we work together, we can get the job done.

So, we look forward to hearing your testimony. This is our first hearing of this subcommittee for this year, and I want to thank, once again, Senator Shelby and his staff for their ongoing, bipartisan cooperation.

Last year was kind of a difficult year, particularly at the end, but Senator Shelby—you and your team were just great.

As we look at this year's appropriation, we note that we are in a year of transition. This time next year, we will have a new President, and—a new administration. What we are very clear about on this subcommittee is that this appropriation that we do this year will be the operating budget for the first year of the first term of the new President.

So, we've got to get it right. Because regardless of who America chooses, they will have the 2009 appropriations as their first year

of operation. So, in the areas for which we have responsibility, we want to have everything as very clear and well-established to continue our national priorities. And we will be working together on a bipartisan basis.

What we want to do at this hearing is to hear from the Secretary about the appropriations, we want to hear particularly about how he relates it to the mission of the agency, and also where we are on issues like the America's Competes Act.

The other is that we will also focus on what we call red zone issues, which are areas where there are significant challenges within agencies at the Department of Commerce. We're concerned about the 2010 census, that we're able to do it right, and we understand there's some technological and managerial challenges there.

The other that we continue to be concerned about is the cost overruns of the National Oceanic and Atmospheric Administration (NOAA) satellite program and then the perpetual backlog at the Patent Office. All three of those have dramatic consequences—not only on the Appropriations Committee, but on, essentially, the running of America.

The census must be done, it deals with how we will apportion politically, and other information. The NOAA satellites stand sentry, giving us crucial weather information that saves lives, and it's the Patent Office that helps us do innovation—we take innovation and by turning it into a patent, we then, essentially, help our private sector be able to protect against those who would steal our intellectual property, around the world.

As we look at this year's appropriation, we know the request is over \$8 billion—it's \$1.3 billion over 2008, which we appreciate, but what we're concerned about is that it also eliminates two programs that help our economy—the economic development assistance grants, which is a stand-alone agency, and the manufacturing extension partnership, which is over at the National Institute of Standards and Technology (NIST).

The budget also falls short, we believe, in other areas of innovation. At NIST we applaud that the laboratory program request is \$535 million, almost \$100 million over the omnibus, but it is offset by the termination of important grant programs, which were authorized in the America Competes Act.

At NOAA, the request is for \$4 billion—almost one-half of the total Commerce Department's appropriation request. And when one looks at it, you see it's \$200 million over 2008. And, we could say, "Wow, we're going to really get serious about weather and oceans and global warming, and science education," but really where the money is, is in the satellite program, and if we excluded the growth in the satellite budget, the rest of NOAA would be flat.

Ocean and atmospheric research is cut 4 percent, and education is cut 51 percent at NOAA. We'll talk more about NOAA.

In the area of accountability, I'm going to get right to what I call the red zone issues—census. In terms of management challenges, we've got to take a look at the 2010 census. The budget for the Census Bureau grows by 112 percent, to \$2.6 billion—it's \$1 billion more than the omnibus level, but we're concerned that with these handheld technologies, where there seems to be challenges in their

workability. We're concerned that billion could go to boondoggle, rather than achieving the census.

Two years ago, laptop computers got lost, there are privacy and security issues, and now these handheld computers. So, we think Census has some significant management challenges.

Then we come to our favorite NOAA satellite program, satellites are critical to warning about the weather, and observing the changes in the Earth's climate. In other words, satellites help save lives and save the planet.

Senator Shelby worked with me to include a provision in the 2008 omnibus to give us early warning about satellite costs. We want to know how the Department, then, is doing that, to be sure we implement the Nunn-McCurdy framework.

And last and not at all least, is the Patent Office. We continue to be concerned about the backlog and the waiting times, which continue to worsen. It now takes over 27 months for the Patents Office to issue a patent. And the backlog now is over 1 million.

This is unacceptable. We've made progress, we've worked very tirelessly on management reform, we've increased the budget, it's 27 percent more than what it was in 2005, but we continue to have a backlog. More needs to be done to reverse this, and we look forward to your ideas.

Mr. Secretary, we look forward to hearing you, and I now turn to Senator Shelby.

#### STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. We have worked extremely well during our tenure here, sharing many of the same goals and expectations of the agencies that we oversee, including the Department of Commerce.

I'm pleased to serve beside her, and once again, doing what is shaping up to be another tight fiscal year.

I look forward to learning about how the 2009 budget request will improve the Department of Commerce's mission. Overall, the Department's budget request for 2009 is \$8.18 billion, an increase of \$1.32 billion from the funding level providing into 2008 omnibus appropriations bill.

The Nation relies heavily on the Department of Commerce to maintain America's competitiveness within markets around the world.

The Department works hard to provide avenues to promote the products and services of U.S. businesses, and then helps to level the playing field through expanding, strengthening, and enforcing our international trade agreements.

Through the Department of Commerce programs, our country is able to maintain high technical standards, as well as staying on the cutting edge of scientific research, all of which are fundamental to our Nation's leadership in the global market.

I'm pleased to see that the American Competitiveness Initiative, or ACI, continues to receive support from the administration, through the National Institute of Standards and Technology's budget request. The ACI will maintain the competitive edge that our Nation expects in the world economy through research and innovation, focusing on the ingenuity of our people, and tying our ca-

pabilities to policies that would keep us at the forefront of scientific and technical advancement for generations to come.

The strength of America's economy rests on our ability to innovate, and use the latest technology to solve the problems of today, and preserve our economic and scientific leadership in the future. With the recent downturn in the economy, it's more important than ever that we do all we can to push the envelope in innovation and science to maintain our competitive edge in the world.

I believe that Chairwoman Mikulski and I will work together to do all we can to ensure that science and technology are funded at the highest levels in our bill.

If we can not train more engineers and doctoral students, America will fall behind the rest of the world. If we don't make a relatively small investment now, make no mistake about it—playing catch-up with the rest of the world will cost us fiscally and strategically.

The operations of both NIST and the National Oceanic and Atmospheric Administration, or NOAA, function to keep the Nation competitive, and inspire the next generation of scientists and researchers. We must find better ways to use NOAA's education programs to capture the imagination of our children, to encourage them to pursue careers in science and research.

Secretary, as we work to evaluate the number of scientists and engineers, I believe we also need to have the high-tech jobs of the future ready for them through our investment in transformative research in our Nation's businesses. The Technology Innovation Program at NIST will work to create the high-paying, technical jobs that drive our economy now, and are essential to our future.

The \$4.1 billion budget request for NOAA—a 5 percent increased over 2008 enacted level—is a pleasant surprise. However, none of the significant increases included in this request are directed at the Gulf of Mexico.

The gulf coast still lacks the infrastructure, research and support from NOAA that other regions of the country have perpetually received. Since the recent rash of devastating hurricanes, nearly all infrastructure improvements for fish, severe weather forecasting, and research in the gulf, have been borne solely by the members of this subcommittee, with little or no assistance from NOAA headquarters.

While I have been a big proponent of NOAA and worked with the Chairwoman to protect them from significant cuts that other agencies were forced to absorb in last year's conference negotiations, I can no longer turn a blind eye toward the continual lack of commitment by NOAA to the gulf coast. Therefore, I may not be able to protect NOAA at the expense of other agencies and programs this year.

Mr. Secretary, I'm troubled by the large number of expensive technology procurement failures at the Department. I understand that the Geostationary Operational Environmental Satellite Program is back on track, but I'm disappointed that a \$6.2 billion program, originally intended for four satellites has ballooned into a \$7 billion program for only two satellites.

I understand their importance for weather and research, but I have trouble understanding the benefits, when the taxpayer is

stuck paying \$800 million more than the original estimate for one-half the product, and a delivery date 3 years later.

Further, the national polar orbiting operational environmental satellite system (NPOESS) has mushroomed from a \$6 billion estimate to more than a \$12 billion, with less functionality, and a delivery date 4 years later. I believe this is inexcusable.

Since 1790, and every 10 years thereafter, this country undertakes a constitutionally mandated effort to count its population. Planning for the next decennial census begins almost immediately after the previous one has been completed. So far, it's taken 8 years and counting, merely to implement a plan to re-engineer the 2010 census.

The Census Bureau's new technology initiative—acquiring and using handheld data collection devices—has been promising to bring the census into the 21st century, with improved accuracy, and reduced cost. It has been brought to my attention, at the committee level, that as the census is about to enter a crucial point in this technological transition, the Department has grave concerns about the Census' ability to manage and to deploy the handheld devices, and associated data collection necessary to carry out a successful 2010 census.

I'm troubled that when my staff met with senior officials late last year, they were told that the \$600 million contract for the handheld devices was on schedule and that there were no major concerns.

A few weeks later, the Census submitted more than 400 necessary changes to the handheld device contractor—400. In 2005, the inspector general reported that the Census had insufficiently defined requirements for the data collection and handheld devices. The inability to define the requirements, combined with the 400 last minute changes, means that no one knew what they were asking the contractor to build to begin with, and yet a contract for more—yes, more—than \$500 million was signed by the Commerce Department.

The inspector general was right in his take on the Census Bureau, I regret it took 3 years to come to the realization, they have a problem. While I have been assured that you have a plan to bring this situation under control, Mr. Secretary, I have to wonder if any of the managers who told subcommittee staff the handheld contracts were still on track, are still involved in this program today. How much more of the taxpayers' money will be squandered before someone is held accountable for what is supposed to be a less expensive and more efficient Census? While I understand and support the importance of technology to assist the components of the Department, I cannot support unlimited, and unchecked resources.

I believe it's imperative that you, as the Secretary of Commerce, proceed with caution to ensure that the Department does not make the same, blatant mistakes again. We expect results, and working with Senator Mikulski, we will do everything that we can to ensure success.

Thank you for appearing with us today.

Senator MIKULSKI. Colleagues, I'm now going to turn to Secretary Gutierrez. There's a vote at 10:55 a.m. What I offer as a way of proceeding is the Secretary presents his testimony, then I'll be

the wrap up questioner. Because if we have votes, I'll be more than willing to come back. I know—and I'll turn to you two first. Does this sound like a good way to go?

Senator STEVENS. Well, I'd just ask unanimous consent that my opening statement be put in the record, and my questions be submitted.

Senator MIKULSKI. Absolutely, yes.

Senator STEVENS. I'm managing one of the bills on the floor, so I really can't—I'm just here to pay my respects to the Secretary.

Senator MIKULSKI. Absolutely.

Senator STEVENS. Thank you very much.

[The statement follows:]

#### PREPARED STATEMENT OF SENATOR TED STEVENS

Secretary Gutierrez, we welcome you before the subcommittee to discuss the fiscal year 2009 budget for the U.S. Department of Commerce. I commend the Department's efforts in the past year to enhance our nation's competitiveness, support our public and private sectors with reliable data, better understand our planet's weather and climate, and manage and protect our marine resources.

We look forward to working with you to address the important issues that face us in the coming year.

The work of your Department continues to be critical to the economic, social, and environmental health of my State.

Your commitment to Arctic science is of great importance to Alaska, where the impacts of climate change will occur first and be the most pronounced. The sustainability of our fisheries depends on NOAA research and management efforts. Given our inclement weather, vast coastline, commercial fishing activities, and dependence on aviation, Alaskans rely heavily on NOAA for weather forecasting and storm warnings. EDA grants stimulate economic growth in distressed Alaskan communities. Those are just a few examples.

Mr. Secretary, we look forward to hearing today about your priorities in the current budget request.

Senator MIKULSKI. And if there is a question you would like to ask orally, if your staff will give it to us, we'll be sure to ensure that.

Okay, Secretary Gutierrez?

#### OPENING STATEMENT OF CARLOS M. GUTIERREZ

Secretary GUTIERREZ. Thank you, Madam Chairman, Senator Shelby, and members of the subcommittee. I'm very pleased to present the—President Bush's 2009 budget request for the Department of Commerce, and with your permission, I'd like to make a brief oral statement and submit my written testimony for the record.

The Department of Commerce is charged with promoting economic growth, competitiveness and opportunity for the American people. This request for \$8.2 billion is a careful, and fiscally responsible budget that reflect the commitment to fulfilling the charge, and to maintaining U.S. leadership in today's global economy.

I'd like to highlight some of the key items in the budget. For the National Oceanic and Atmospheric Administration, \$4.1 billion is requested, that includes \$1.2 billion to provide timely access to global environmental data from satellites and other sources, \$931 million to provide critical weather observations, forecasts and warnings to American communities and families, and \$759 million for stewardship of living marine resources and habitats, including

a \$32 million increase to directly support implementation of the Magnuson-Stevens Act reauthorization.

The funding requests for Economics and Statistics Administration (ESA) headquarters and the Bureau of Economic Analysis which produces the Gross Domestic Product and other vital economic data is \$91 million.

For the International Trade Administration (ITA) which supports U.S. commercial interests at home and abroad, the request is \$420 million. U.S. exports totaled a record \$1.6 trillion in 2007, and free trade agreements are leveling the playing field, and helping American exporters access new markets.

Free trade agreements with Colombia, Panama, and South Korea are now pending in Congress. Colombia is priority, it's a democracy and staunch ally of the United States, and we need to stand by Colombia in the cause of freedom, while at the same time creating new opportunities for U.S. exporters.

The ITA budget request includes a \$3.8 million increase for enforcement and countervailing duty law with respect to China and other non-market economies.

The National Institute of Standards and Technology request of \$638 million will keep America on the leading edge of scientific and technological advances. It puts us back on track to double the funding for NIST basic research in the core physical sciences by 2016, a major goal of the President's American competitiveness initiative.

As you know, the National Telecommunications and Information Administration is administering the digital television transition and public safety fund, including the TV converter box coupon program.

As with any budget, tough decisions were made. The Economic Development Administration (EDA) budget request for 2009 is \$133 million. For the Census Bureau, which is part of the Economics and Statistics Administration, \$2.6 billion is requested. This includes a program increase of \$1.3 billion, to fund the 2010 decennial census, and continue the American community survey.

Yesterday I testified before the Senate Homeland Security and Government Affairs Committee on how the Department is working to address some of the challenges currently facing the 2010 census.

The 2010 census is one of the highest priorities and most important responsibilities of the Commerce Department, however, I should say the field data collection automation, which we also know as FDCA, is experiencing significant schedule, performance, and cost issues. This is unacceptable, as I know it's unacceptable to the subcommittee.

Concerns about the FDCA program grew over time, and we're taking several steps to address the situation. Following his confirmation in January, new Census Director Murdock began a top to bottom review of all components of the 2010 census. On February 6, he launched a 2010 census FDCA risk reduction task force, which is headed by Bill Barron, a former Deputy Director and Acting Director of the U.S. Census Bureau.

As a result of the ongoing work of the task force, we are exploring four options. Option one is to continue with the Harris Corporation's original project plan, simultaneously evaluating the develop-

ment of a paper-based backup plan. So, option one, essentially, is to continue with the baseline option.

Option two is to shift everything but address canvassing back to Census Bureau, including the operational control system, and field infrastructure. Non-response follow up would then be paper based under that option.

Option three would move non-response follow up and field operations infrastructure to Census with Harris developing the operational control system and the address canvassing.

Option four would shift non-response follow up back to Census as paper based, while Harris would handle the operational control system, and field operations infrastructure, as well as address canvassing.

So, each option, essentially, has a variance on how much Harris handles, and how much we send back to the Census Bureau, to be able to achieve the census.

Yesterday, I announced that I am forming a panel of outside experts to review these actions, and other potentially serious problems with certain aspects of the 2010 census, and to provide recommendations to assure a fully successful census. The panel will augment the ongoing Census Bureau review of the overall 2010 census operations, regarding field data collection automation, or FDCA, especially the private contractors technological infrastructure support of the FDCA contract, and management practices.

I am personally very involved in bringing key issues to the surface, and developing a way forward. The American people expect and deserve a timely and accurate decennial census, and the Department and I will not rest until they have it. So, it is our goal, not only to have a good census, but we'd like to shoot for having the best census.

Madam Chairman, the President's fiscal year 2009 budget for the Department of Commerce will enable the Department to continue to provide vital statistics, strengthen the stewardship of living marine resources, support the innovative and entrepreneurial spirit of America, and increase our competitiveness in the global marketplace.

This is the last time it will be my privilege to present to the Senate Appropriations subcommittee President Bush's budget proposal for the Department of Commerce, I want to thank the members for your consideration, for your courtesy over the last several years. I want to thank you for your support of vital Commerce programs that have served the Nation, the business community, the people of this great country, and while this is my last hearing, I hope to continue working with you over the next year.

#### PREPARED STATEMENT

So, thank you very much, and I'd be glad to take questions or comments.

[The statement follows:]

#### PREPARED STATEMENT OF CARLOS M. GUTIERREZ

Madam Chairman and Members of the Subcommittee, I am pleased to appear before you today to present the President's budget request for the Department of Commerce. Our request of \$8.2 billion in discretionary funds reflects a balance between the Administration's commitment to the Department's mission to promote and sus-



tain economic growth, and the need to restrain discretionary Federal spending. Enactment of this budget will enable the Department to continue to support the innovative and entrepreneurial spirit of America and increase our competitiveness in the international marketplace.

The President's fiscal year 2009 budget request of \$4.1 billion for the National Oceanic and Atmospheric Administration (NOAA) reflects the Administration's commitment to environmental stewardship. It represents an increase of \$214 million above the fiscal year 2008 enacted level. NOAA encompasses the National Weather Service, which provides critical observations, forecasts and warnings; the National Environmental Satellite, Data and Information Service, which provides timely global environmental satellite data; the National Marine Fisheries Service, which provides stewardship of the Nation's living marine resources and their habitat; the National Ocean Service, which measures and predicts coastal and ocean phenomena; the Office of Oceanic and Atmospheric Research, which provides research for understanding weather, climate, and ocean and coastal resources; and the Office of Marine and Aviation Operations, which operates a variety of aircraft and ships providing specialized support for NOAA's environmental and scientific missions.

The request continues support for development and acquisition of the next-generation Geostationary Operational Environmental Satellite (GOES-R), with an increase of \$242 million as we enter the main procurement phase for the spacecraft and the ground control system. There is also a \$32 million increase to continue improving fishery management under the Magnuson-Stevens Act that was reauthorized in 2006, and a \$40 million increase to continue construction of the Pacific Region Center in Honolulu, Hawaii. The budget includes new requests of \$74 million to restore climate sensors that were demanifested during the Nunn-McCurdy review of the tri-agency National Polar-orbiting Operational Environmental Satellite System (NPOESS) Program, and \$12 million to replace the Satellite Command and Data Acquisition station in Fairbanks, Alaska.

The Economics and Statistics Administration (ESA) promotes the understanding of the U.S. economy and its competitive position. ESA's Census Bureau is the leading source of quality data regarding the Nation's population and economy, and the President's fiscal year 2009 budget requests \$2.6 billion in discretionary funds for the Census Bureau. This includes a program increase of \$8.1 million to provide policymakers, business leaders, and the American public with comprehensive and timely data on the service economy, which now accounts for 55 percent of economic activity.

The largest increase requested, for both the Census Bureau and the Department, is \$1.3 billion for the 2010 Decennial Census to fund critical operations and preparations for 2010, improve accuracy of map features, and continue the American Community Survey on an ongoing basis. As you are aware, the Census Bureau is currently experiencing significant challenges in the management of the Field Data Collection Automation (FDCA) project for the 2010 Census. I can assure you that not only the Census Bureau but the Office of the Secretary is devoting all of the resources at our disposal to resolve the IT management issues with FDCA and develop a successful way forward. We will keep you informed of our progress.

ESA's Bureau of Economic Analysis (BEA) promotes understanding of the Nation's economic condition by providing policy makers, business leaders, households, and individuals with essential economic data. This data includes the Gross Domestic Product (GDP) as well as other regional, national, international, and industry-specific information. The President's fiscal year 2009 budget requests \$91 million for ESA Headquarters and BEA. This request includes an increase of \$5.7 million to improve measurement of the health care sector and to incorporate the impact of research & development investments into the GDP.

The International Trade Administration (ITA) supports U.S. commercial interests at home and abroad by promoting trade and investment, ensuring fair trade and compliance with domestic and international trade laws and agreements and strengthening the competitiveness of American industries and workers. The President's fiscal year 2009 budget requests \$420 million for ITA. This request includes an increase of \$3.8 million for enforcement of the Countervailing Duty Law with China and other non-market economies, as well as a decrease of \$3.0 million to reflect streamlining of Trade Promotion and domestic U.S. & Foreign Commercial Service offices. In the future, as in the past, our long-term economic growth will also be enhanced by supporting international trade, by opening world markets to U.S. goods and services and by keeping our markets open. Congress can help create jobs and economic opportunity by passing the pending Free Trade Agreements with Colombia, Panama and South Korea.

The Economic Development Administration (EDA) assists states, regions, and communities in promoting a favorable business environment through capacity build-

ing, planning, infrastructure investments, research grants, and strategic initiatives. The President's fiscal year 2009 budget requests \$133 million for EDA. The request reduces funding for the Economic Development Assistance Programs (EDAP) by \$149 million in order to support other Administration priorities.

The Bureau of Industry and Security (BIS) regulates the export of sensitive goods and technologies to protect the security of the United States. The President's fiscal year 2009 budget requests \$84 million to enable BIS to effectively carry out this mission. The request includes \$2.4 million in program increases to upgrade export enforcement and to ensure compliance through validating end-users in foreign countries.

The Minority Business Development Agency (MBDA) focuses on accelerating the competitiveness and growth of minority-owned businesses by assisting with economic opportunities and capital access. The President's fiscal year 2009 budget requests \$29 million to enable MBDA to continue its activities to increase access to the marketplace and financing for Minority Business Enterprises.

The President's fiscal year 2009 budget request of \$638 million for the National Institute of Standards and Technology (NIST) will advance measurement science, standards, and technology. The request includes increases of \$71 million for research initiatives at NIST Laboratories and National Research Facilities, and \$62 million for Construction and Major Renovations as part of the President's 10-year American Competitiveness Initiative (ACI). This will put us back on track to double the funding for NIST basic research in the core physical sciences and engineering by 2016, to ensure continued U.S. leadership in this area, a major goal of ACI.

The request includes \$4 million to transition Hollings Manufacturing Extension Partnership centers to a self-supporting basis, and does not include new funding for the Technology Innovation Program (successor to the Advanced Technology Program).

The National Technical Information Service (NTIS) collects and preserves scientific, technical, engineering and other business-related information from Federal and international sources and disseminates it to the American business and industrial research community. NTIS operates a revolving fund for the payment of all expenses incurred and does not receive appropriated funds.

The National Telecommunications and Information Administration (NTIA) develops telecommunications and information policy, manages the Federal radio spectrum, and performs telecommunications research, engineering, and planning. A key responsibility for NTIA is administration of the Digital Television Transition and Public Safety Fund (DTTPSF). During fiscal year 2009, NTIA estimates obligating \$592 million from the DTTPSF to support several one-time programs created by the Deficit Reduction Act of 2005, most notably \$472 million for the Digital-to-Analog Television Converter Box Program. The other \$120 million in DTTPSF obligations includes \$50 million to implement a national tsunami warning system and \$60 million to assist low power television stations in upgrading their signals from analog to digital formats. In addition, NTIA will continue working with the Department of Homeland Security to implement the Public Safety Interoperable Communications grant program. The President's fiscal year 2009 budget request of \$19 million in discretionary budget authority for NTIA includes a reduction of \$18 million to terminate further grants for Public Telecommunications Facilities, Planning, and Construction.

Furthering the mission to promote the research, development, and application of new technologies by protecting inventors' rights to their intellectual property through the issuance of patents and trademarks, the President's fiscal year 2009 budget requests \$2.1 billion in spending authority for the U.S. Patent and Trademark Office (USPTO). The USPTO will use these funds to reduce application processing time and increase the quality of its products and services. Consistent with prior years, the Administration proposes to fund the USPTO budget exclusively through offsetting fee collections. Fee collections for fiscal year 2009 are projected to cover the proposed increases.

Departmental Management (DM) funds the Offices of the Secretary, Deputy Secretary, and their support staff. Staffs in these offices develop and implement policy, administer internal operations, and serve as primary liaison to other executive branch agencies, Congress, and private sector entities. The President's fiscal year 2009 budget requests \$20.8 million in discretionary appropriations for DM, which includes a \$48.6 million rescission from the Emergency Steel Guaranteed Loan Program. Proposed increases include \$7.1 million to upgrade IT security and ensure mission essential communications, and \$3.6 million for blast mitigation windows and other renovations to the 76-year-old Herbert C. Hoover Building.

The Office of the Inspector General (OIG) strives to promote economy and efficiency, and detect and prevent fraud, waste, and abuse in Departmental programs

and operations. The President's fiscal year 2009 budget requests \$24.8 million to enable the OIG to continue to effectively meet these mandates. Also, the budget requests \$1 million to improve the OIG's ability to evaluate and improve the security for the Department's information technology assets.

The Department of Commerce is a diverse group of agencies, with varied expertise and differing needs, all engaged in a common commitment to keep the United States at the global forefront of competitiveness and innovation. The President's fiscal year 2009 budget effectively meets those needs, while exercising the fiscal restraint necessary to sustain our economic prosperity. I look forward to working with the Committee to keep our Nation's economy growing and strong, and to promote technological advancement and environmental stewardship.

Senator MIKULSKI. Mr. Secretary, thank you for a very crisp testimony. We want to acknowledge that Senator Jack Reed of Rhode Island has come.

What we're going to do, Senator Reed—because there is a vote—we're going to let Senator Brownback go first, we'll come to you, Shelby and I—Senator Shelby and I will be the wrap up.

So, we can keep it crisp?

#### TRADE DISPUTE WITH EADS AIRBUS

Senator BROWNBACK. We'll try to keep it crisp.

Secretary, thank you for being here, I appreciate that. And in the notion of crispness, then I want to focus you on the trade dispute we have with Airbus in the case that's supposed to be reported out, I understand, a ruling on it in April.

Just to—and you know this case very well, it's been our ongoing subsidy fight with EADS Airbus, that's—I was in Bush One in the trade field, and we were fighting with Airbus then. And we're still fighting with them.

But, as you know, European governments have subsidized EADS Airbus, we contend—our government, U.S. Government—\$15 billion in launch aid, financing—including \$5 billion on the A-330, 340 program, which is \$5 billion on launch aid, just for that particular program.

The A-330, 340 program is the largest recipient of European government support, support from French, German, Spanish, British. We initiated a trade dispute against them, and I understand that is potentially going to report out in April.

If we win that, we will be entitled to retaliatory measures against Airbus, is that correct, Secretary?

Secretary GUTIERREZ. I believe that's one of the options, depending on—hopefully, that we will win that. We're working with the United States Trade Representative (USTR), and USTR, of course, is the lead on this, but we hope to be able to prove that there are launch subsidies, something that has worried us for a long, long time, but I can't be specific as to what we will be able to get back if we win.

Senator BROWNBACK. Is it the U.S. Government's position that the A-330, 340 program has received \$5 billion in launch aid from the European governments?

Secretary GUTIERREZ. I'm not sure about the exact amount, but we have always stated and alleged that they receive launch subsidies for their new products, as well as their new, large-body plane, and that is essentially what we are taking forward.

Senator BROWNBACK. And that's the U.S. Government position?

Secretary GUTIERREZ. Yes.

Senator BROWNBACk. Do you believe that European subsidies have created an unfair playing field for U.S. companies, competing against EADS Airbus?

Secretary GUTIERREZ. I believe that they have made Airbus able to compete with lower prices versus Boeing, because of these government subsidies that they have had.

Senator BROWNBACk. I'm sorry, go ahead.

Secretary GUTIERREZ. I just think it says a lot about Boeing that Boeing has been able to compete and win and gain market share, in spite of competing with these subsidies.

Senator BROWNBACk. You're concerned about the rapid increase in the European share of the U.S. commercial aviation market over the past two, three decades?

Secretary GUTIERREZ. Yes. And to the extent that these are achieved, because of the benefit of subsidies, then absolutely. We want to be able to compete on a fair playing field, and we believe they do have the benefit of these subsidies.

Senator BROWNBACk. And you believe the current playing field is not fair for U.S. commercial aviation?

Secretary GUTIERREZ. If we can prove that these subsidies are what we say they are, then it is not. Because they are receiving launch subsidies from their government, they're not projecting the total cost of the plane when they have to price to sell that plane.

Senator BROWNBACk. Are there other obstacles as well that U.S. companies face in competition with the subsidized European firm of EADS, that owns 80 percent of Airbus, in addition to the direct subsidy of the—what we suggest is \$5 billion in launch aid, just for the A-330, and then \$15 billion overall in launch aid in financing for their whole fleet of planes?

Secretary GUTIERREZ. Our major concern has been launch subsidies. Aside from that, we know that it's a very competitive firm, and we have some very competitive firms, and we're constantly competing for major contracts—which we don't mind—but we just want our company to be playing on a level playing field. And if they are receiving this level of launch subsidy for these large planes, then they are not reflecting the full cost in their price, which gives them an artificial advantage.

Senator BROWNBACk. And you're aware that the current contract that was just let for the Northrop Grumman uses the A-330 base plane, which we are contending is a heavily subsidized plane that's in its start?

Secretary GUTIERREZ. Yes.

#### RETALIATORY MEASURES AGAINST EADS AIRBUS

Senator BROWNBACk. What retaliatory measures might we use, if we win this case against EADS Airbus? What's possible?

Secretary GUTIERREZ. I'd like to be able to get back to you on that, Senator Brownback. These are, obviously, legal questions. I don't want to preempt anything that USTR may want to state, but if you'd like, I'd be glad to go back, look at the different options we have, assuming we win, and get those to you. And I don't think there would be a problem in that, I don't think USTR would have a problem with that, but I do want to respect their lead role in this case.

[The information follows:]

RETALIATORY MEASURES FOLLOWING RULING IN EADS AIRBUS CASE

The WTO has not yet made its ruling in this dispute, so it would be premature to speculate on possible retaliation. However, if the WTO rules in favor of the U.S. complaint, we would hope that the EC would comply with that ruling or reach a mutually acceptable agreement. Should we not reach an acceptable outcome and assuming that the WTO dispute settlement body authorizes retaliation, there remain U.S. statutory procedures that require consultation and public notice and comment as to the particular retaliatory countermeasures to be adopted. Only after such consultations could we have a sense of what measures might be taken.

Senator BROWNBACK. Thank you.

Thank you, Madam Chairman.

Secretary GUTIERREZ. Thank you, Senator.

Senator MIKULSKI. You were crisp.

Senator BROWNBACK. Trying to.

Senator MIKULSKI. You raised excellent points.

Senator Reed.

ECONOMIC DEVELOPMENT ADMINISTRATION

Senator REED. Thank you very much, Madam Chairman and Senator Shelby.

Thank you, Mr. Secretary, for joining us today. I, in my experience over 18 years now, have found the Economic Development Administration (EDA) to be an incredibly effective and efficient source of support for local communities. I could list a number of items of support for my State.

The most recent one, the one I am concerned about is support to the city of Woonsocket, Rhode Island. They had a levee system that, after Katrina, was declared substandard. We have taken steps to transfer the authority to the Corps of Engineers and the Corps will assume the authority, but the city still has the obligation for ongoing repairs and upgrades until the transfer is complete.

EDA has stepped in with a lot of technical assistance, and the city has a grant proposal at the agency now. I personally want to thank, and show my appreciation of Tyrone Beach of your Philadelphia office and Dennis Alvord of your Washington office, for their assistance and their hard, hard work.

This is an important issue, and certainly any consideration you could give would be appropriate, because literally, the city would have been bankrupted if they were forced to make these repairs and shoulder this responsibility ongoing.

So, all of that is a long prelude to the question of—given the need we have for projects like this across the country, in fact the American Society of Civil Engineers have rated our infrastructure “D”—why are we cutting roughly \$170 million from the budget of an agency that is effective, efficient, responds to the needs of local communities in a very thoughtful and businesslike way, when the demands are way beyond the capacity of the existing budget?

Secretary GUTIERREZ. Senator, I understand your point. We had to make, obviously, some decisions to reallocate some of our funds, we wanted to make sure that we got the long-term basic research right in NIST and we are a little bit behind our plan on that, so

we had a 22 percent increase in NIST. Of course, we had the satellites, we have the census.

The only thing I can say about EDA is that because these are grants, this is not a permanent cut. We have the flexibility to increase it and lower it, without having to commit to something that is long term. So, it is a 1-year cut, that's the way we're thinking about it, and again, it comes down to the tough role of having to allocate within a limited budget.

Senator REED. I appreciate the difficulties of prioritizing these programs, given the current budget situation, but I think this is one that would require a little more reflection.

And I would also just finally point out, because I want to stay within my time, that it's sort of the curse, the baseline. Once you reduce EDA at this level, next year when you talk about increasing it, even a robust increase probably does not get it up to where it was. And I think that has to be considered long term.

So, even though you see it as a 1-year cut, if this is cut this much, it will very difficult to replace that funding and get it to the level I believe it should be.

But, thank you for your consideration, Mr. Secretary.

Secretary GUTIERREZ. Senator, the city you mentioned, I just want to make sure I get that right—Woosakah?

Senator REED. That's the way you say it, if you have a terrible Rhode Island accent, like I have, but it's actually Woonsocket, W-O-O-N-S-O-C-K-E-T.

Secretary GUTIERREZ. Okay, thank you.

Senator REED. Thank you, Mr. Secretary.

Senator MIKULSKI. Senator Shelby.

#### TANKER CONTRACT TO EADS AIRBUS

Senator SHELBY. Mr. Secretary, I just want to pick up on a point made by Senator Brownback, a little bit. You know, trade is important, fair trade is very important to all of us. But when the Air Force selects a plane, and this is at the Pentagon, and chooses an airframe that's made in Europe, but the plane will be assembled in my State of Alabama, and thousands and thousands of new U.S. jobs—maybe not Boeing jobs—will be created, I think the Air Force's top criteria is what's best for the warfighter.

In this case we—have regular order, we have a process that Boeing will have to go through, and should go through, to protest this award. The Air Force concluded that the Northrop Grumman proposal was superior in five main categories, over the Boeing plane. And I think that what we need to do is buy the best thing for the warfighter. You know, this is not going to be used in commerce, it's going to be used in national security.

There is a process to go through, Senator Brownback knows that. Assuming there is a protest, GAO will review the awarding of the contract to Northrop Grumman/EADS, over Boeing. I believe they will uphold the award, but I don't know that. Because I don't know, and I don't believe Congress, including the Senator from Kansas, the Senator from Alabama, or Senator Mikulski, should get into the procurement business. Senator Warner spoke very strongly on that the other day as others have, too. Whether it's made in Kan-

sas, or Alabama, or Maryland we better leave procurement up to the Pentagon, and not to us.

I have several questions, and I have some for the record dealing with the Department of Commerce.

#### MANAGEMENT OF DECENNIAL CENSUS

Given where we are today, Mr. Secretary, would you rate the Census Bureau's management of the decennial census, as moderately effective? Poor, or what?

Secretary GUTIERREZ. Based on where we are today, I would have to be very convincing to say moderately effective.

Senator SHELBY. Well, you couldn't convince me to that, now.

Secretary GUTIERREZ. I know. I'm not going to try, Senator Shelby. I'm disappointed.

Senator SHELBY. You've got good standing, you don't want to ruin that standing.

Secretary GUTIERREZ. Yes.

We're in the situation today, and I will know so much more in 3 weeks when the task force gets back, but we are probably facing an overrun, and I'll know more about that. We're looking at different options, we may not be able to use all of the technology that we had hoped for.

So, given that, and given the amount of time that it took the communication to work itself up the ladder, I would say I'm disappointed. I'm very much part of it, and I'm not separating myself from it, but it's been very disappointing.

Senator SHELBY. Indeed. People over at Census which came up with this—the handheld device, which makes sense, to some extent—did they know, really know, what they were doing when they're coming up with 400 additional changes? I mean, one or two, three or four—but 400? Plus the cost. That bothers us, as appropriators, and it should, and it should bother you, as the Secretary.

Secretary GUTIERREZ. Yes, sir.

Well, I think that part of the problem has been the lack of experience in working with an outside contractor that would come in and do a lot of the work that Census once did. And then once that happens, the level of intensity of management has to increase and I don't think that happened. I don't think that happened early on.

So, Harris would have a certain date of delivery, Census would have another date—it just says that people—

Senator SHELBY. Why? Why? Why?

Secretary GUTIERREZ [continuing]. People weren't talking. They hadn't set up the management processes to ensure that an outsider can come in and do what Census had always done.

So, I think this is, while it comes down to a technology issue, I think that's a symptom. And from my standpoint, Senator, what we have is a management issue, and a cultural issue.

Senator SHELBY. What about a software problem?

Secretary GUTIERREZ. Well, we had some software problems in our address canvassing, which we've done. We did our dress rehearsal, and those, I understand are fixable. We have work to do with the software, but those are fixable, but as you say with the 400 changes that were identified, some of those are software. It can

be done, it's just a matter of the level of confidence of having to do that when we're 2½ years away from the Decennial Census.

Senator SHELBY. Are the same people at Census that came up with this idea to begin with, and assured the subcommittee that everything was rosy—are they still over there, running this program?

Secretary GUTIERREZ. We have a new Director.

Senator SHELBY. Okay.

Secretary GUTIERREZ. Who's been on board for 1 month. And we have a fairly new Deputy Director who has been in that role for almost 1 year. So there were some changes that took place.

Senator SHELBY. Okay.

Secretary GUTIERREZ. Last year.

Senator SHELBY. Secretary, can we—this Committee of Appropriations—dealing with Commerce, and your money—can we anticipate a supplemental request from you, your Department, to accommodate the difficult position that the Census finds itself in?

Secretary GUTIERREZ. That's the question I will have answered Senator Shelby. I should have the amount of money, but also if it falls into 2009 and 2010. We believe that a lot of it will fall in 2010, and we're also going to try to find the money internally before we do anything. So, I wish I could be more specific, but I'd like to wait before responding on the money and the timing. And then, I'll be back to this subcommittee with the full plan.

#### COLOMBIA AND PANAMA SHRIMP EXPORTS

Senator SHELBY. It's a lot of money.

Mr. Secretary, going over to NOAA, free trade and shrimp?

Secretary GUTIERREZ. Yes.

Senator SHELBY. If I can talk about that a minute. Has your Department examined Colombia and Panama's shrimp export activities, prior to these recent trade discussions? And, if so, what were your findings? If you don't know, will you get it?

Senator MIKULSKI. Shift gears on that one.

Senator SHELBY. Yeah.

Secretary GUTIERREZ. I will get back to you on that. I know that we—a lot of our shrimp activities are with Vietnam and Asia, but I will look back at Panama and Colombia.

Senator SHELBY. This would be dealing with Colombia and Panama's shrimp activities.

I have a number of other questions, Madam Chairman, but I will submit them for the record and ask them in the timeframe we have.

[The information follows:]

#### COLOMBIA AND PANAMA—SHRIMP ACTIVITIES

##### *U.S. Shrimp Trade with Colombia and Panama*

The Department of Commerce's International Trade Administration reports no anti-dumping case work on shrimp with Panama or Colombia, nor any outstanding or longstanding shrimp-related issues within the purview of the National Oceanic and Atmospheric Administration (NOAA).

##### *Colombia*

In 2007, Colombia exported 2,221,646 kg of shrimp (of various product types) to the United States at a value of \$12,877,685. That year, U.S. shrimp exports to Colombia amounted to 125,551 kg with a value of \$909,424.



### *Panama*

Panama exported 4,453,686 kg of various products of shrimp to the United States in 2007, valued at \$36,644,581. In 2007, U.S. shrimp exports to Panama amounted to 28,474 kg, valued at \$231,805.

### *Free Trade Agreement (FTA) Provisions*

The Office of the United States Trade Representative (USTR) reports no shrimp-related trade issues with Panama or Colombia—not before, during, or after the FTA negotiations with these countries.

### *Market Access*

U.S. fish and fish product exports, including shrimp, will benefit from the pending FTAs with Colombia and Panama. Colombia's tariffs on high-priority U.S. fish exports such as shrimp, salmon, and sardines will be eliminated immediately upon entry into force of the United States-Colombia FTA. Currently, Colombian tariffs on U.S. fish exports range between 5 and 20 percent with an average of 18.9 percent. Similarly, Panama's tariffs on U.S. shrimp exports will be eliminated immediately upon entry into force of the United States-Panama FTA. Panama's tariffs on U.S. fish exports currently range between zero and 15 percent with an average of 12.7 percent.

For years prior to the launch of FTA talks with Colombia and Panama, the U.S. market was open to fish imports from these countries. The U.S. tariffs on fish and fish products average only 2 percent. Under the United States-Colombia FTA, most U.S. fish imports from Colombia will continue to receive duty-free treatment upon entry into force of the Agreement. Similarly, under the United States-Panama FTA, 100 percent of U.S. fish imports from Panama will receive duty-free treatment immediately upon entry into force of the FTA. It is important to note these products, including shrimp, currently enter the U.S. market with little or no tariffs.

### *Turtle Excluder Devices (TED) Certification*

The chief component of the U.S. sea turtle conservation program is a requirement that commercial shrimp boats use sea turtle excluder devices (TEDs) to prevent the accidental drowning of sea turtles in shrimp trawls. On May 1, 2007, the Department of State certified 40 nations and one economy as meeting the requirements set by Section 609 of Public Law 101-162 for continued importation of shrimp into the United States. Section 609 prohibits importation of shrimp and products of shrimp harvested in a manner that may adversely affect sea turtle species. Colombia and Panama were among the countries certified.

## FDCA TECHNOLOGY

Senator MIKULSKI. Thank you very much.

I'd like to pick up on Senator Shelby's line of questioning on the Census. Two points—number one, we've talked about the management issues, and you're a skilled manager, and we have a new Director of the Census in Mr. Murdock, so management is one thing.

But, let's go to the technology. In this year's appropriation in the President's request, he's asking for, through you, \$1 billion more. We have to make sure that \$1 billion gives us value at the end of the day. So, could you tell the subcommittee—what is the technological problem? What—I know that there are 400 changes, et cetera, but what doesn't work? If—think of someone knocking on the door, "Hi, I'm from Census," and they have this technology in their hand and then they're asking their questions—at what point does this break down?

Secretary GUTIERREZ. Yes, there are two big problems. One is that it takes a longer amount of time to capture the information for one interview than what was assumed. The other problem is that the number of interviews that a handheld can absorb in a given day is a lot less than what we expected. So, if you go into one of these apartment buildings with a lot of tenants, now all of a sudden we can't do that with one enumerator, we'd have to do that with more than one.

Senator MIKULSKI. But what is it about—the technology that is broken—again, pardon me, but who cares if it lasts longer? Is it a consequence to the battery, what, what?

Secretary GUTIERREZ. I believe it's a design of the software. I don't think it's a capacity problem, I think it's just the way that the requirements were communicated. And part of the problem is how the requirements were communicated to the contractor—this is what we need, this is the capacity we need, this is what an enumerator does every day—there are also some productivity assumptions that were not valid that were put into the program, so that also impacts.

Senator MIKULSKI. So, the handheld can't absorb what we had hoped that it could absorb. So, it could mean, then, if you don't fix the handheld, you will need more people, because it takes more time.

Secretary GUTIERREZ. Yes.

Senator MIKULSKI. Okay. Then, is the handheld able to send it to the mother ship? I mean, is there a mother ship that absorbs all of this?

Secretary GUTIERREZ. That's the plan. The whole idea was that the handheld would help us determine every single address in the country. We're also using global positioning satellite (GPS) technology this time. We'd send the questionnaires to those addresses, and then those households that did not respond, we would go back with the handheld, and all of that information would go back to what we call an operational control system, that would essentially get back to the enumerator with their tasks.

Senator MIKULSKI. Pardon me, I'm a very plain-spoken and plain-thinking person. And knowing the way a census goes, there has to be—there will be someone who will knock on a door—

Secretary GUTIERREZ. Yes.

Senator MIKULSKI [continuing]. Presuming someone's at home and friendly and willing to answer. That in and of itself is an assumption—a big assumption. Because if they don't respond, there's usually a reason—they're old, they're poor, they could be hiding, they could have 15 people living in a house, some documented, some not.

I mean, we've done censuses for 200 years—this is not a special ops operation, where we are doing a new secret thing in a foreign territory. It's in our country, we've been doing it for 200 years, and it's all been based on some form of interview.

So, this is not to lay that on you, but the fact that they didn't understand what the hell they were being asked to do, I find shocking. If we are that dumb, we've got a problem in our country, let alone with technology. This, is again, not secret, not special ops.

So, but here—they've gotten, you know, income under \$50,000, et cetera. Then do they push a button, and it goes to a central facility?

Secretary GUTIERREZ. Yes.

Senator MIKULSKI. And is that part working?

Secretary GUTIERREZ. That is one of the options we have, is to take that control system away from Harris, and put it into—

Senator MIKULSKI. That's your option, but is it working now with the Harris contract?

Secretary GUTIERREZ. I'll be able to answer that in 3 weeks.

Senator MIKULSKI. Okay.

Secretary GUTIERREZ. The experts are looking at it to see if it's capable of—

Senator MIKULSKI. And the enumerators talk to the computer, and that's going to take longer, and a computer isn't ready to work as hard as the enumerator. Then the handheld talks to the mother ship—we're not sure it can talk the same language. Then, having done that, the question is, can the mother ship process that information?

You're shaking your head—who are you?

Mr. WIENECKE. I work for the Secretary.

Senator MIKULSKI. So, can the mother ship process it? Okay.

Mr. WIENECKE. That's what we're working through right now.

Senator MIKULSKI. Do you know the answer if the mother ship can process the information?

Mr. WIENECKE. We're testing that.

Senator MIKULSKI. Okay. Now, let's presume that's happened, then they have to tell the enumerator the next day what they're to do.

Secretary GUTIERREZ. That's right.

Senator MIKULSKI. Do they talk back?

Secretary GUTIERREZ. They essentially give the enumerator their schedule and tasks, and where they have to go for the next day.

Senator MIKULSKI. Okay.

Secretary GUTIERREZ. They also calculate productivity, they also calculate wages.

Senator MIKULSKI. So, what you're saying, though, this could be really a collapse.

And colleagues, this is really serious. Again, this is the United States of America. We hold ourselves out to be technological innovators, and we can't develop technology to take a census where we know the process, and we've known it for 200 years.

So, now, let's get to the money. If we have to do handheld, I mean, if we go to paper—if the United States of America has to do a paper census, it borders on a scandal. It really does.

Senator SHELBY. Madam Chairman, could I just interject one thing, just follow up?

Senator MIKULSKI. Yes, because I want to get to the money punch line.

Senator SHELBY. Okay. I just—

Senator MIKULSKI. Because we're heading to something that's—do you realize if we have to pay for a paper census—

Senator SHELBY. I know.

Senator MIKULSKI [continuing]. Yes, go ahead, Senator.

Senator SHELBY. Just, I was just thinking of the software, here, and I'm a long way from being a software engineer. But, a census—the questions you ask during the census—I've talked to some software people, they said, "That's so simple," you know, to program. I mean, because you're asking—let's assume you have the form, and you have to knock on the door, you know, and you had to fill it out, which we've done—that's not difficult. Is it laborious? Is it labor-intensive? It could be. And the software, or the handheld computer was to save money, be more efficient, and everything

else. But, I don't think you're asking—whether it's Harris or whoever's doing it, the Commerce Department—you're not asking for a difficult software program.

Senator MIKULSKI. Right.

Senator SHELBY. And I think the chairman's right. Thank you for letting me interrupt—

#### POSSIBLE SUPPLEMENTAL APPROPRIATION

Senator MIKULSKI. Let's get to the—so, you're going to have answers. But, here's where we are. Senator Shelby asked—as he does, such excellent focused and targeted questions—as he said, are you prepared to ask for money in a supplemental? And, as I understand your response is, “Oh, we will turn to the Department first.”

Secretary GUTIERREZ. Yes, I think I should say that—

Senator MIKULSKI. Can I just give you a head's up?

Secretary GUTIERREZ. Yes.

Senator MIKULSKI. The supplemental appropriations will be before the Senate in mid-April. So, when you have your answers, we can't wait to know—we only get one crack at the supplemental. And this Appropriations Committee cannot absorb the fix, even if we get a robust allocation, because of all of our other compelling needs and very important agencies across—remember, we not only have Commerce, we have Justice, where local law enforcement has been drastically cut, we're concerned—we could go on. So, we have to, if there—if you—I don't know where you're going to get the money. Because what we passed for the omnibus, was pretty lean. We scrubbed this pretty well.

So, what we're saying, Mr. Secretary is, that whatever is the fix that is required, we would respectfully recommend that it be in the President's supplemental. I mean, we really do need a plan by, I would say, April 10. Because we'll be on the floor.

Secretary GUTIERREZ. And we should have a plan, and numbers before that time, late March—and I will bring it to you as soon as we have it.

Senator MIKULSKI. Fine, but we need, not only a plan, but we need a method—

Secretary GUTIERREZ. Yes.

Senator MIKULSKI [continuing]. For paying for the plan.

But, we have a lot of confidence in your management ability.

#### NPOESS SATELLITE PROGRAM

Let's go, then, to NOAA satellites. As I understand it, in terms of the famous NPOESS program, which is polar satellites, which are so important to giving us information about weather and climate, that there's—in addition to the cost overruns, that there is also another technological problem that could exacerbate the overruns.

We understand that there is a main sensor, known as VIIRS, that's supposed to take a picture of the ocean color—now, why is that important? The ocean color tells us the temperature, which then gives us important information on climate change and weather. But that—what it's going to take a picture of is now blurry.

You know, I went through that—the Hubble telescope over 20 years ago, Senator Shelby was very aware of that—you know, we

can't put a satellite up and then have it need a contact—its sensor needs a contact lens.

So, our question is, oh my God, do we have to then fix the sensor, while we're already in cost overruns?

Secretary GUTIERREZ. We——

Senator MIKULSKI. Are you aware of this problem?

Secretary GUTIERREZ. Yes. The assumption at this point, is that sensor will delay that part of the project by 8 months. We have not added 8 months to the end completion date. So, the VIIRS is 8 months off schedule, but the assumption is that we will be able to get back on schedule for the full NPOESS. So, we're still saying NPOESS will be launched in 2013. But that VIIRS sensor is 8 months behind schedule.

Senator MIKULSKI. But, even on schedule, will it be able to see and do the job that it's supposed to do? Or is that another technological fix that requires, again, more money?

Secretary GUTIERREZ. I don't know that, and I have not heard that. I have not heard that there will be another overrun on that part of it.

Senator MIKULSKI. Well, Mr. Secretary, what Senator Shelby and I would like to do is submit our concerns about this in writing, because after we get it on track, and they deliver it, if we have a sensor with a blurry vision, and the whole point of it is that it's looking from the sky at our oceans, which gives us very important predictability, and like, his questions about shrimp, I'm asking about rockets——

Secretary GUTIERREZ. The quality should be a constant, and——

Senator MIKULSKI. Yeah, it should be.

Secretary GUTIERREZ [continuing]. At this point, is——

Senator MIKULSKI. Well, right now, we hear it's blurry. We hear it's blurry.

#### GOES-R SATELLITE PROGRAM

Let's ask—let me go to GOES-R, and—which is another satellite program. Our question will be—what assurances can we give the subcommittee that we're not going to run into the same cost overruns with GOES-R as we did with NPOESS?

Secretary GUTIERREZ. Well, and I'll be very up front here, we've gone from \$6.9 billion to \$7.6 billion and I believe you brought that up a little while ago. We are, today, \$500 million away from having to trigger a Nunn-McCurdy-like process. I have been told that doesn't look like it's in the cards—one of the reasons that we have this \$800 million increase is because we have mitigation plans, we have been very conservative, we have ensured that we're looking at the downside risk, but I just want the subcommittee to know that we've got to track this very closely, because we are \$500 million away from hitting that 20 percent mark. So GOES-R is clearly the big priority right now.

Senator MIKULSKI. Well, that really gives us pause, because—first of all, there seems to be a consistent pattern of cost overruns in the NOAA satellite program. That's number one.

Number two, that along with the cost overruns is then once we pay for it, do we get value for the dollar? The so-called, blurry-eyed sensor?

Secretary GUTIERREZ. Right.

Senator MIKULSKI. I have a real problem with our satellite programs across our Government. Whether it's in the classified area, or in others—we just don't seem to be able to get our satellites up on time, on budget, and then meeting what the expectations and criteria.

So, here's where we are. What I would like—right now, the census is a crisis. We've got to get it solved, and we've got to get the payment for it within the supplemental. We ask you to please focus on that.

#### MANAGEMENT REFORMS FOR SATELLITE PROGRAMS

But we ask you to take a look now, also, at the NOAA satellite program, and give us a path forward, in terms of what you think will be the management reforms necessary in the—in this. One, so we can keep it on track for this year's appropriations, but at the same time, what this will mean for the incoming NOAA Administrator. Because we can't just be left holding the bag, and America will lose interest. People with scientists have their self on the line.

Secretary GUTIERREZ. I'd be glad to do that, Madam Chairman. [The information follows:]

#### MANAGEMENT REFORMS IN NOAA SATELLITE PROGRAM

Within the Department of Commerce, the National Oceanic and Atmospheric Administration operates and manages two major environmental satellite programs: the Geostationary Operational Environmental Satellites (GOES) in geosynchronous orbit above the equator, and the Polar-orbiting Operational Environmental Satellites (POES) which provide global coverage in a low earth orbit.

Following the Nunn-McCurdy certification of NOAA's next-generation polar-orbiting system—the National Polar-orbiting Operational Environmental Satellite System (NPOESS)—the Department and NOAA have strengthened the management, oversight, and systems engineering processes of its satellite systems acquisitions. These changes will ensure that NOAA does not repeat the NPOESS mistakes in the development of the next generation Geostationary Operational Environmental Satellite series (GOES-R). These changes include:

- Robust Risk Reduction in instrument acquisition processes. Risk reduction in these processes requires careful management and engineering attention. Both GOES-R and NPOESS are aggressively managing instrument acquisition to mitigate the risk to the entire program.
- Technical Teaming with NASA to implement proven NASA space acquisition processes in Department of Commerce and NOAA acquisition strategies. For GOES-R, this approach is documented in a GOES-R Management Control Plan (MCP) which allows the GOES-R program access to the expertise and experience of both NOAA and NASA, their support contractors, and of the best of each agency's acquisition processes to ensure active and in-depth oversight of the development contractors. For NPOESS, NOAA has teamed with the Air Force and NASA with activities guided by a Memorandum of Agreement among the Department of Commerce, Department of Defense, and NASA which is implemented by a series of management, acquisition, and funding arrangements.
- Regular Management Oversight and Reporting by the satellite programs to senior management officials. The GOES-R program reports to the Department of Commerce and NOAA executive management, and NASA engineering teams through NASA and NOAA Program Management Councils (PMC). The NPOESS programs reports to the NPOESS Executive Committee (EXCOM) which is comprised of senior representatives from NOAA, NASA, and the Air Force that provides programmatic and management oversight and guidance. The NPOESS program also reports monthly to the NOAA PMC.
- Realistic Cost Estimating and Budgeting that vets the Government cost estimates by independent experts to ensure that adequate resources are applied to areas of high risk. This means budget requests will more likely cover expected costs without requiring additional budget allocations to deal with unforeseen issues.

- Program Control and Congressional Oversight is ongoing with annual program reports for both the GOES-R and NPOESS and quarterly reporting of program status to Congress.
- Management of Contractors using Incentive Fee Structure to ensure the Government utilizes a full range of incentive and performance management approaches to facilitate contractor management.
- Independent Reviews by Experienced Space Acquisition Experts such as the Independent Review Team (IRT) to provide NOAA and the Department of Commerce with unvarnished opinions of the program's readiness at key decision points.
- Recruitment of Experienced Program Managers and Program Executives to implement internal controls, to improve insight into emerging cost, schedule, and technical issues and exercise stronger management control on the release of management reserve and changes to the estimate at completion. For the GOES-R and NPOESS programs, seasoned and experienced Senior Executives have been placed in lead management positions. For the NPOESS Program, in addition to the System Program Director who is involved in day-to-day activities of managing the system acquisition, a Program Executive Officer position was established to provide high level monitoring of the program and contractor performance.

Senator MIKULSKI. We note that the vote has started, has the second bell occurred?

Senator BROWNBACK. Madam Chairwoman, could I ask one other question—

Senator MIKULSKI. On what topic?

Senator BROWNBACK. On the—

Senator MIKULSKI. I have questions related to the Patent—is it on the satellites?

Senator BROWNBACK. No, it's on the subsidization, but I just wanted to ask—

#### PATENT BACKLOG

Senator MIKULSKI. I'd like to finish my patent question.

Senator BROWNBACK. Okay.

Senator MIKULSKI. We have over a 1 million case backlog. There is a persistent pattern in our Patent Office with these issues. We have given them more money, we have given them more flexibility, but at the end of the day, our innovators and our inventors—be they big companies or those start-up companies that make America great, feel they're standing in line. Could you share with us, where you think we should be going forward? Is it a money problem? Are we doing our part? What is the problem, here?

Secretary GUTIERREZ. Where we are today, essentially, Madam Chairman, it is like, we are on a treadmill and we're trying to catch up. The number of applications is increasing, and each application is more complex than it was 10 or 20 years ago. So, we're adding 1,200 people every year, and our initial pendency, the first time we get back to people, is up to 25 months. Our final pendency, when we finally get back with a patent, is over 30 months. So, the number of people we're adding is not enough to keep up with the applications and the complexity.

I think we need to come up with different process solutions, other than just adding more people. One day we're going to have 500,000 people, and we're still not going to be caught up.

So, one of those things we're looking at, and this is where we'd like to go to the patent bill, we need some help on this, is we'd like to be able to offer applicants that, if they do more of the work

themselves, that we will guarantee we will get back to them in 12 months. But that will essentially take some of the work that we're doing—having to do quality reviews and sending the application back, and asking for more information—if they do the work themselves, we would guarantee a speedier response. That's a big solution.

We're also looking at some workplace methods, flexible workplace, working from home. We're also looking at the flexibility of having quotas on a quarterly basis, instead of on a daily basis, so that people can be more empowered to manage their time and their priorities.

So, I think we need to look at the process and a different way of thinking about this than simply adding more people every year. By 2013, we would have added 8,000 more people.

Senator MIKULSKI. Well, this is really—again, we're almost at a breaking point, here. With 1 million patents pending. And at this breaking point, we've added more money—I won't repeat myself—the part you've said we have to look at the patent bill, that's beyond the scope of this subcommittee.

But, in terms of the personnel reforms, that's not beyond the scope of this subcommittee, and I think we need to look at how do we retain the people we recruit, because of just the knowledge factor—they walk out, go to the private sector, et cetera, it's a big loss. And it takes at least 2 years for them to really know how to get—the do the job in the way they do. Because experience counts.

We really need from you, this year, what we're going to do here, whether it's flexibility on work hours, or all of these other creative things, because we're really frustrated, the Judiciary Committee is really frustrated, but America—the private sector is.

I'll just stop here, because in the report on our innovation, from the National Academy of Science, "Rising Above the Gathering Storm, Where We're Falling Behind", they said one of the key things in an innovation-friendly Government is the Patent Office, which enables us to, not only take our brilliant inventions that are being done, but to really make sure that we protect them against our intellectual property being robbed.

So, this is really, I mean, these are really three big issues we've laid out here—the census, which is a crisis, the satellites, which are bordering on a crisis, and then this whole other issue with patents, that I believe stifles our ability to turn our innovations into products that could be sold around the world.

Secretary GUTIERREZ. We're also looking at sharing work with some other Patent Offices in international countries where it makes some sense.

Madam Chairman, on the satellites, I offered up this notion that we are \$500 million away—I've asked that question internally, I was told that we won't see that, because we've had mitigation costs, and we've been very careful about this increase to \$7.7 billion. But, I just want you to know what I know—

Senator MIKULSKI. Well, we've been told things before. We were told, from the Census, "Oh, don't worry about it." We've been told, "Oh, gee, the satellites," there's three different agencies, you know, we've been told a lot of things, and we're now acting like Missouri, "Show us."



So, Mr. Secretary, we think you're doing a great job, but these three things are really—have now come to the Cabinet level, and we look forward to working with you.

Secretary GUTIERREZ. Thank you.

Senator MIKULSKI. There's only about 3 minutes left in the vote—Senator Brownback, did you want to have a round of questions?

#### SUBSIDATION OF EADS AIRBUS AIRCRAFT

Senator BROWNBACK. Yes, and I won't take long on this, but this is just a—this is a big deal, it's been going on for a long time. Just to complete that area, because I tried to stay within my time on that 5 minutes, and—but we believe, the U.S. Government, that every EADS Airbus plane receives launch aid in its development, believes in our proposal that each is given help in the development costs, is that correct, in the U.S. Government's position?

Secretary GUTIERREZ. I'll have to check if every single plane—I know that we have alleged that the new planes that have come out, that there have been launch aids given by the Government.

Senator BROWNBACK. And that, for the A-330, includes the A-330 airplane?

Secretary GUTIERREZ. I believe so.

Senator BROWNBACK. My point to you is simply that wherever the plane is put together, it's the U.S. Government's position that that plane has received somewhere between 33 percent to 100 percent of its development cost from European governments, and that's in our claim, that's in our proposal. And that that applies in pulling down the cost of each of those planes, and that's why they can be more competitive against a Boeing plane, is in our base proposal.

And that's, I just—I wanted to draw that attention to you, and to my colleagues, because if we win this case and we're successful on it, there's going to be, then, what are we going to do in response to this, toward EADS and Airbus? And it's going to affect a lot of things that are being discussed, and the Secretary is going to be involved in these retaliatory measures, substantially, because of the development cost was for the whole plane. And then that is spread about over all planes that are sold.

So, I—I appreciate Madam Chairman—

#### CLOSING REMARKS

Senator MIKULSKI. Colleagues, I'm going to have to close out the hearing. I'm going to invite Senator Shelby to have whatever he wishes to say. But I want to announce that this hearing, after the conclusion of his remarks, will come to an end. The subcommittee, we can submit questions and so on for 30 days, we will stand in recess until March 13, when we'll hear from NOAA and NSF.

Senator SHELBY. Madam Chairman, I just want to answer that, the best I can. We have this ongoing dispute of subsidies, and that's got to be settled there, but what we have here, though, is an award of a tanker by the Air Force that's going to be built in the United States with the air frame which comes from EADS, which the Air Force has selected in five major categories as superior, and we're talking about the warfighter, what's best for the warfighter.

Boeing, in a lot of people's estimates, submitted an old plane, old technology, and they lost, fair and square. And now they're trying to come in different ways. I don't believe it's going to work. I think the decision by the Air Force will either be upheld or changed by the Government Accountability Office and that's regular procedure, that's not before us today.

Thank you.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator MIKULSKI. If there are no further questions this morning, Senators may submit additional questions for the subcommittee's official hearing record. We request the Department's response within 30 days.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

#### QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

##### CENSUS—2008 DRESS REHEARSAL AND HANDHELDS

*Question.* I understand that the handheld computers were tested in last year's dress rehearsal of address canvassing. How did they perform? What problems were identified? What is the status of fixing those problems?

*Answer.* We completed the Dress Rehearsal Address Canvassing on schedule using the handheld computers supplied by the FDCA contractor. Although we experienced some software, help desk, and training problems with this first-ever deployment of the contractor's solution, many of the problems were resolved quickly. We continue to examine the results to determine what needs to be done to make improvements for the 2010 Census Address Canvassing operation, which will begin a year from now.

During the Dress Rehearsal Address Canvassing operations, where census enumerators verify and update our Master Address File, the devices proved to be reliable, with a hardware failure rate of less than 1 percent—much better than industry standards. The devices were also secure—they required a fingerprint and password to operate, and the data were fully encrypted in the device and during transmission. We successfully collected precise Global Positioning System (GPS) coordinates for housing units and map features; data we collected were transmitted effectively via both landline and wireless transmissions; and our workers were generally comfortable working with the device. We were also able to identify software problems and apply solutions simultaneously and uniformly to all devices via electronic transmission to each device daily upon start-up.

Following the Dress Rehearsal Address Canvassing operation, Census Bureau and contractor staff identified problems and analyzed their causes to learn from this operation. Teams conducted more detailed analyses of the transmission component of the design and performance during Address Canvassing. These analyses included data on average transmission time, the average size of transmissions, the type of data being transmitted, and the number of transmissions. The contractor also analyzed the end-to-end transmission workflow, problems documented in help desk tickets, and assignment area size. These analyses led to a number of corrective measures that are now being taken to improve performance of the handheld computer and of the transmission process. For example:

- The initial handheld computer software design inhibited efficient transmission to and from the handheld computer, resulting in enumerator downtime. We resolved this by making improvements to the database design and implementing hardware and software upgrades.
- The handheld computers did not function well if the data files were too large. They worked most efficiently with assignment areas of up to 720 addresses. However, approximately 3 percent of the assignment areas had more than that. We are addressing this issue for the nationwide 2010 Census Address Canvassing operation by limiting the size of the assignment areas and the amount of data that must be downloaded and processed on the handheld computer.
- The contractor's operations support ("help desk") solution was insufficient to meet the type and amount of support needs for our field staff. We are address-

ing this by improving operational readiness (more testing, increased knowledge base development, and additional support personnel training) and by jointly developing a more robust support system.

#### FDCA TECHNICAL REQUIREMENTS

*Question.* The Field Data Collection Automation contract was awarded on April 4, 2006. Obviously, at the time Census and Harris figured all the work associated with the contract could be accomplished on time and within the \$600 million budget.

Given the complexity of the system why were Census' assumptions regarding time required for the handheld contract so far off?

*Answer.* Early in the decade, we believed our experienced Census Bureau staff could develop and deploy the handheld computers for use in the 2010 Census. These staff did produce the solutions we tested in both the 2004 Census Test and 2006 Census Test. Although we were able to develop and use them well enough to determine that we could conduct field data collection on such devices, by 2004 we had concluded that we did not have sufficient expert resources in house to do this for the 2010 Census, so we decided to contract this effort to the private sector. At the time we prepared the RFP, our strategy was to supply high-level functional requirements to the contractor on award, and then to determine final detailed requirements based on what we learned from the 2004 and 2006 Census Tests, and the 2008 Census Dress Rehearsal.

Thus, at the time of contract award in April 2006, both the Census Bureau and the contractor were fully aware this strategy would mean a tight schedule for requirements development, system design, system development, and deployment. The initial requirements strategy at that point was to develop remaining requirements in a two-step process. First, based on results from the 2004 and 2006 Census Tests, we would provide detailed Dress Rehearsal requirements for our major operations. Then, based on lessons learned from the Dress Rehearsal, we would make adjustments to those detailed requirements for 2010 Census operations, as well as develop the detailed requirements for those operations that could not be included in Dress Rehearsal (e.g., enumeration in Puerto Rico; enumeration in remote areas).

The contract was awarded in April 2006—less than one year before the first major application was needed for the Dress Rehearsal Address Canvassing operation. We knew this was a very aggressive schedule, and to mitigate some of this risk, all of the final vendors for the contract were required to develop a prototype of the Address Canvassing device so that, upon award, they would already have initial development underway. However, after contract award, it became clear that the contractor's funding needs by fiscal year differed from what the Census Bureau had assumed in its lifecycle cost estimate for the contract. In particular, the contractor stated they needed more of the overall contract funding earlier in the cycle, including fiscal year 2006. Because the Congress had already appropriated funds for fiscal year 2006, and the President had already made his request to the Congress for fiscal year 2007, the Census Bureau had limited flexibility to address these funding issues directly. In response, the Census Bureau reprogrammed some funding to the FDCA contract, and a re-plan was developed which, among other things, delayed and extended software development into seven increments. Thus, this re-plan added additional risk to the overall development plan and strategy, though at the time the Census Bureau thought the added risk was manageable.

*Question.* Last month, nearly 21 months after awarding the contract Census finally provided the contractor with a final set of technical requirements. Why did it take so long to finalize the requirements?

*Answer.* As mentioned above, at the time of contract award in March 2006, both the Census Bureau and the contractor were fully aware this strategy would mean a tight schedule for requirements development, system design, system development, and deployment. The initial requirements strategy at that point was to develop remaining requirements in a two-step process. First, based on results from the 2004 and 2006 Census Tests, we would provide detailed Dress Rehearsal requirements for our major operations. Then, based on lessons learned from the Dress Rehearsal, we would make adjustments to those detailed requirements for 2010 Census operations, as well as develop the detailed requirements for those operations that could not be included in Dress Rehearsal (e.g., enumeration in Puerto Rico; enumeration in remote areas).

We were moving on that path when, in October 2007, we had to de-scope many paper-based dress rehearsal activities in order to have sufficient funds to keep this contract (and our data capture systems contract) on schedule in developing critical applications and interfaces planned for the Dress Rehearsal. Until that point, we still were planning to use our Dress Rehearsal experiences with various operations

to help finalize detailed requirements for the FDCA contractor. However, because most of those operations had to be cancelled, in mid-November 2007, the contractor requested, and we agreed, to move forward immediately to deliver a final set of all detailed requirements. This effort was completed, and we delivered them to the contractor on January 16, 2008.

#### HARRIS CONTRACT AWARDS

*Question.* I understand that this was a “cost-plus contract”, as such bonuses were awarded based on performance. Harris was awarded two bonuses on grades of 91 and 93 for this program.

What criteria were used to determine that Harris was exceeding expectations and deserved these bonuses?

*Answer.* No bonuses have been awarded for this contract. The only opportunity for the contractor to earn any profit (over and above costs) is through the award fee process. For this contract, there are four evaluation categories for the award fee determination: Business Management; Technical Management; Project Integration; and FDCA/DRIS Integration.

The criteria used in assessing performance are: Quality, efficiency, ingenuity, responsiveness, thoroughness, timeliness, resourcefulness, accuracy, safety/health/environmental compliance, communication, autonomy, and contract management.

FDCA award fees are determined by an Award Fee Determination Board consisting of a Chairperson, eight voting members and three non-voting members and an Award Fee Determining Official, in accordance with procedures outlined below:

- 1. Government Technical Monitors (TMs) prepare/submit monthly Technical Monitors Reports (TMRs) documenting aspects of Contractor performance.
- 2. Government Principal Technical Monitor (PTM) prepares/submit monthly report summarizing TMRs.
- 3. Together with final monthly TMR in the Award Fee Period (AFP), TMs also prepare/submit a summary report of observations over the entire AFP; the PTM prepares a similar overall summary.
- 4. FDCA Project Management Office (PMO) distributes timetable of activities called for by the FDCA Award Fee Determination Plan and schedules necessary meetings/briefings.
- 5. FDCA PMO distributes TMRs/PTMRs, any Individual Event Reports, and related information to Award Fee Board members.
- 6. Contractor submits (and briefs to the Award Fee Determination Board) its Self-Evaluation Report for the AFP in question.
- 7. Award Fee Determination Board members review documentation referenced in previous steps, and other documentation deemed relevant by individual Board members (e.g., field observation reports).
- 8. Award Fee Determination Board meets to arrive at consensus score.
- 9. FDCA PMO documents Board’s findings and conclusions and briefs Award Fee Determining Official.
- 10. Award Fee Determining Official makes final fee determination.
- 11. Government Contracting Officer reviews determination for contract compliance and submits invoice authorization letter to Contractor.
- 12. FDCA PMO debriefs Contractor on final award fee determination.

Step 4 takes place shortly before the end of a given Award Fee Period. Steps 5 through 12 are scheduled so as to conclude no later than 60 calendar days after the end of the Award Fee Period.

#### EFFECT OF FDCA ALTERNATIVE

*Question.* One of the options being looked at is to de-scope the contract and bring work back in-house at Census.

What other programs will suffer as a result of Census reprioritizing staff to work on this program? Will additional contractors be needed? If additional contractors are used, aren’t we back where we started?

*Answer.* We do not believe this decision will have any significant impact on other programs. We likely will have to hire additional staff or contract support personnel to accomplish this work. These contractors will be used to supplement and support Census Bureau staff leading the work. This will not involve another solutions-based contract like FDCA.

#### MANAGEMENT REFORM

*Question.* What management reforms have you put in place in order to avoid problems from now until the conclusion of the 2010 census?

Answer. We have a new Acting Associate Director for Decennial Census, Arnold Jackson. Other moves are under consideration. We are taking a series of steps to strengthen management, including:

- Instituting a new management approach that will strengthen planning and oversight relative to risk management, issue identification, product testing, communications, and budget/cost management.
- Increasing the intensity and pace of senior management involvement, including daily status assessments and problem resolution sessions chaired by the Associate Director, weekly status assessment meetings with the Director and Deputy Director, periodic but unannounced reviews by MITRE and Department of Commerce specialists in IT, project management, and contracting.

We also are developing a comprehensive plan that consolidates the recommendations from several studies and reviews, including MITRE, GAO, our own Blue team, the FDCA Risk Reduction Task Force, and the Secretary's expert panel. Some of the action items we are committing to are:

- Comprehensive risk management such that the higher impact risks are known as early as possible and elevated to proper levels for timely resolution.
- Strengthened leadership in the Decennial Program so that stakeholders, contractors, staff, and management are unified and focused on the issues that drive a successful census.
- Transitioning from a planning phase of the Decennial cycle to an action-oriented operational phase by shortening decision cycles, cutting internal redtape, and pushing more problem resolution responsibility down to our managers.
- Adhering to a structured plan of action to see that the things we have not done well do get better as rapidly as we can.

The FDCA PMO and the Software Assessment Team have agreed to a plan to strengthen oversight of the contractor, and the plan is known as our "Insight Plan". The PMO launched implementation of the Insight Plan a few weeks ago, and some of the key steps of that plan are:

- A much closer review of the contractor's software earlier in the development and test cycle.
- Permanent Census staff at the contractor's Largo facility and staff embedded with the contractor at key points in the development cycle from requirements clarification to product release for final field hands on testing.
- Improving the contractor's test cases by including more realistic census events and operationally characteristic data.
- Involving census users of the information collected by the handheld system in the process of review and approval of contractor products before they are final. This will greatly increase stakeholder participation and bring about rapid feedback needed for problem correction.

*Question.* After the problems with NPOESS we brought in a person with a proven track record to rescue the program and get thing moving in the right direction. Who is your General Mashiko for the Handheld contract?

Answer. We recognize the need for better program oversight, program integration, and acquisition management. We are in the process of finalizing leadership and management improvements that address these needs and expect to announce these in the near future.

#### OTHER 2010 DECENNIAL CONTRACTS

*Question.* The handheld computer contract is just one of many large contracts supporting the reengineering of 2010 operations. Given the problems with FDCA have you begun a top to bottom review of these programs? What assurances can you give the Subcommittee that there are no other problems lurking out there?

Answer. One of our major, multiyear contracts for the 2010 Census recently was completed on time and within budget. Only one minor task and contract closeout remain. The Harris Corporation successfully completed its tasks in support of this MAF/TIGER Accuracy Improvement Program, which now has brought our geographic databases into GPS alignment for the entire country.

For our two other major IT contracts, we are working with the same vendors who supplied similar solutions for Census 2000. For the Data Response Integration System (DRIS) contract, we selected Lockheed Martin, who was the contractor for the Census 2000 data capture system. For the Data Access and Dissemination System (DADS) II contract, we selected IBM, who also was the contractor for our existing DADS system. While previous experience with the same contractors on similar tasks is no guarantee of a problem-free process, we are much more confident these contracts will be completed on time and within budget.

Although not an IT contract, we do have some initial concerns about the Communications contract and have reduced their initial award fee for the first evaluation period. Our primary concern is that their initial draft plan was not as fully detailed or analytically robust as we required in our statement of work. They can recover this fee reduction in the second evaluation period, and we are hopeful their performance will improve so that they do so.

#### SATELLITE OVERSIGHT DURING ADMINISTRATION TRANSITION

*Question.* What management reforms have you instituted within your office to ensure adequate oversight of NOAA and its satellite programs as we transition into a new Administration?

Answer. With regards to the GOES-R program, on December 21, 2007, the Department delegated Key Decision Point Authority for the GOES-R program to the Under Secretary for Oceans and Atmosphere. With that delegation, the Department laid out a series of expectations for the program:

- The GOES-R program will adhere to the Department's standard review board processes.
- NOAA and the GOES-R program will make available all information necessary for budget oversight and legal advice.
- NOAA and the GOES-R program will provide the Department with all briefings and information packages for all Key Decision Point Reviews and will provide the Chief Financial Officer and Assistant Secretary for Administration quarterly briefings.
- The Department established cost and schedule thresholds for reporting variances.

The Department fully expects that these requirements will survive the transition into a new administration. In addition, the NOAA Deputy Under Secretary, a career NOAA executive, will continue to provide senior oversight of NOAA's satellite acquisition programs. The Assistant Administrator for Satellite and Information Services and Deputy Assistant Administrator for Systems have multiple years of experience acquiring satellite systems and will continue to provide day-to-day supervision of the System Program Directors of the Geostationary Operational Environmental Satellite N Series (GOES-N), GOES-R Series, Polar-orbiting Operational Environmental Satellites (POES), and the National Polar-orbiting Operational Environmental Satellite System (NPOESS) programs.

NOAA has also established a Program Management Council (PMC) that meets monthly to review and provide oversight to the major acquisition programs. The PMC will continue its reviews of all NOAA satellite acquisition programs during the transition period.

#### VIIRS AND OCEAN COLOR REQUIREMENTS

*Question.* The latest problem with NPOESS is its main sensor, known as VIIRS, will not meet all of the requirements for "ocean color" in time for the NPP launch. However, we have been told that this problem will be corrected in time for the first NPOESS launch.

Answer. This is correct. In 2007, problems were noted during testing of the VIIRS instrument that were traced to the Integrated Filter Assembly (IFA), which allowed some light to cross into the wrong detectors, and caused degraded performance of ocean color sensing.

The NPOESS Executive Committee (EXCOM) directed the NPOESS Integrated Program Office (IPO) to: (1) fly the first sensor on NPP with the existing IFA, accepting the existing performance degradation for that mission; and (2) resolve the VIIRS IFA problems before flying it on NPOESS C1.

The agreed path forward is to remanufacture the IFA to achieve an acceptable Ocean Color/Chlorophyll (OC/C) capability for NPOESS C1. The remanufactured IFA was delivered ahead of the scheduled June 2008 plan. Performance results are expected from IFA testing this year.

*Question.* By placing a VIIRS on NPP with less than 20/20 vision will we still get useable science when it comes to ocean color?

Answer. The expectation for Visible/Infrared Imager/Radiometer Suite (VIIRS) on NPP is expected to exceed existing operational earth observation capabilities in space. VIIRS is expected to meet 20 of 21 Environmental Data Records, including the Imagery and Sea Surface Temperature Key Performance Parameters (KPP). These data records are the main scientific data required of the NPP. Only Ocean Color/Chlorophyll (OC/C) products and Aerosol will be degraded.

Although these Ocean Color/Chlorophyll products and Aerosol will be degraded from original levels of performance, aerosol measurements will still be at specification.

*Question.* What assurances can you give us that the ocean color problem will be correct on VIIRS in time for the first launch of NPOESS?

Answer. The remanufactured Integrated Filter Assembly (IFA) incorporates a different coating technology which is expected to significantly reduce the amount of degradation. Testing later this year will verify performance against the VIIRS specification requirements.

#### GOES-R CONTRACTS

*Question.* Will the contract for GOES-R be a "firm-fixed price" or a "cost-plus" contract?

Answer. The contracts for the GOES-R Ground and the Flight Segments will be Cost Plus Award Fee (CPAF) contracts.

*Question.* Will the GOES-R contract include cost overrun penalties to ensure contractors don't get away with another boon-doggle?

Answer. The GOES-R Program will structure the contract management mechanisms for the Ground and Flight Segment contracts to ensure adequate safeguards to prevent contract overruns.

For the GOES-R Ground and Flight Segment contracts, overall cost performance will be evaluated on how well the total cumulative actual costs were controlled as compared to the negotiated baseline estimated costs. Per the award fee structure, the contractors should not earn a satisfactory rating for cost control when there is a significant cost overrun within its control. The Government will consider the reasons for any overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

#### GOES-R "COST-PLUS" CONTRACT OPTION

*Question.* Given all the problems associated with the Department of Commerce's other "cost-plus" contracts, namely the Handheld computers at Census and NOAA's own NPOESS, would it not be a better decision to not do a "cost-plus" contract?

Answer. A cost plus type contract is suitable for the GOES-R Ground and Flight Segment contracts as there are too many uncertainties involved in contract performance that do not permit costs to be estimated with sufficient accuracy to use a fixed-price contract. Because of the high degree of uncertainty in developing this new observing system and the volume of data produced by these new sensors that the ground system will have to process, contractor proposals for a fixed-price contract would contain an extremely large amount of risk/contingency funding which would eliminate any degree of potential savings with a fixed-price contract. In addition, cost pressure on a contractor in such a contract can drive them towards cost cutting efforts that threaten mission success. For programs such as these, NOAA prefers to maintain risk dollars outside of the contract in order to have close government control of cost/schedule and technical trades throughout the development cycle.

#### GOES-R TOTAL PROGRAM COST

*Question.* If the decision is made to build the 2 option satellites then what will the total program cost be?

Answer. The estimated cost for the additional two satellites is estimated between \$2.5 and \$3 billion above the current \$7.672 billion cost for the two satellite program. This includes four satellites, instruments for each, ground facility support, and operations and sustainment (O&S) funding for the lifetime of all four satellites. The last satellite (GOES-U) is expected to cease operations in 2036.

#### UNITED STATES PATENT AND TRADEMARK OFFICE

*Question.* At last year's hearing we talked about my concerns with PTO. I appreciate that you took my request for a remediation plan seriously. Unfortunately we need to do more. For example the GAO has recommended that patent examiner's work production quotas need to be revised. Do you agree with this recommendation?

Answer. In September 2007, the GAO recommended that the USPTO undertake a comprehensive evaluation of the assumptions that the agency uses to establish its production goals. In September 2004, the Commerce OIG also recommended that the USPTO reevaluate current patent examiner goals and assess the merits of revising them to reflect efficiencies in and changes to work processes resulting from automation and other enhancements. I agree that a comprehensive evaluation of the assumptions that the agency uses to establish its production goals is appropriate.

*Question.* Will you charge the PTO to immediately begin a comprehensive revision of these work production quotas?

*Answer.* I support the USPTO's ongoing efforts to conduct a strategic level assessment of its patent examiner production process in comparison to best practices similar to other large-scale federal agencies and commercial organizations.

To that end, the USPTO is selecting a contractor with expertise in assessing practices in large-scale production environments to conduct an independent analysis.

Another significant component of these ongoing efforts includes evaluation of the Flat Goal Pilot Program, initiated by the USPTO in April of 2007. The "Flat Goal" pilot tests a new concept of how patent examiner production is measured.

Specifically, the 173 patent examiners who volunteered for the one-year pilot (April 2007-April 2008) are given flexibility in choosing when and how to do their work, and may earn larger, quarterly bonuses for every application examined above a particular target goal rather than earning bonuses on an annual basis.

Examiners who participate are assigned a production goal at the beginning of each quarter rather than tracking their use of examining time throughout the quarters of the fiscal year. The results of the flat goal pilot may help the USPTO reassess some of the assumptions underlying the examiner production goals.

*Question.* Since we met last year patent waiting times have continued to increase due to the increasing dual challenges of rising workloads and more complex challenges. What efforts has PTO made to provide continuing education to its examiners so that they can review these ever more complex technologies?

*Answer.* Effective training and continuing review and education are priority issues for the USPTO because the agency recognizes that the expertise of its examining corps is the primary factor influencing patent quality.

#### *Tech Fairs*

Our Technology Centers (TCs) regularly hold on-campus "tech fairs" where industry speakers share state-of-the-art information with our patent examiners. In April 2008, the USPTO held a Design Day for its design examiners (TC 2900), where USPTO specialists shared information on the Hague Agreement and its implementation and how design patents impact the economy.

On May 5, the USPTO has planned a Tech Fair for the biotechnology area (TC 1600). Dr. John Rossi from Beckman Research Center of City of Hope will speak about the state of the art in Dicer-substrates and Oligonucleotides and Dr. Kevin D'Amour from Novocell will speak about human embryonic stem cells. On May 14 and 15, a Tech Fair is scheduled for the semiconductor area (TC 2800). Thomas Gallagher from IBM will speak about magnetic random access memory; Santokh Badesha from Xerox will give an overview of electrophotography; and Michael Nelson from NanoInk will speak about "Nanotechnology Applications and Micro Electromechanical (MEM) Devices."

On June 4 and 5, the USPTO has planned a Tech Fair for the mechanical area (TCs 3600 and 3700). Dr. Ned Allen from Lockheed Martin will speak about the F-35 Joint Strike Fighter; John Boller from Mizuno will speak about golf equipment; and William Bachand from Taser International will speak about the "Taser Gun."

We are happy to invite you and your staff to participate in any of USPTO's tech fairs so you can see for yourself the sort of cross-pollination training provided for examiners.

#### *Expanded Technical Training Program*

The USPTO has expanded the range of eligible non-duty training courses available for examiners to enhance their technical skills and abilities. A similar "After Work Education" (AWE) program is currently being implemented for technical support personnel.

While the USPTO has provided paid non-duty training in the past to patent examiners to enable them to take technical classes, it was determined that the previous program was too restrictive. In response to an explicit need expressed by the examiners, amendments were made to broaden the program to provide examiners with one year of experience at the USPTO the opportunity to take classes in arts outside their immediate docket. The classes, however, must still be related to a recognized technology that is examined at the USPTO.

This program will assist in developing and maintaining a highly skilled workforce by enhancing the employees' knowledge, skills and abilities through formal education. Currently, the patent examiner can receive up to \$5,000 per year, and the agency has proposed to raise that opportunity to \$10,000 per year.

#### *University-style Training*

USPTO's recently established university-style training program leads to new-hire examiners with the ability, skills and confidence to work with reduced oversight.



The training program consists of classes of approximately 130 students, which are broken down further into small “labs” of approximately 16 examiners who will work in a similar area of technology. The training program is conducted over a period of 8 months in a location outside of the Technology Centers.

The program courses are taught through a combination of large lectures and small group sessions within the individual labs. The curriculum is kept current by a committee, with representation from every Technology Center, that writes and reviews the substance of the curriculum.

Lectures are followed by practical application and testing. The results of ongoing testing, administered electronically, indicate to examiners how well they grasp a particular topic and provide the trainer with information as to whether segments of the topic need additional review. Examiners write Office actions that are reviewed and evaluated by the trainer who provides appropriate feedback. A proficiency test is administered at the end of the 8-month program. The intent of the program is to deliver, to the examining corps, new hires who are capable of writing complete Office actions for supervisory review.

#### *Examiner Certification and Recertification*

The USPTO has implemented a thorough certification process for any patent examiner seeking to be promoted from the GS-12 level to the GS-13 level. This process includes a review of the work product of the examiner and a certification exam modeled upon the patent bar exam that patent attorneys and agents must pass.

Examiners are provided with legal education on fundamental concepts involving patent laws and procedures to assist them in the preparation of taking the certification exam. Patent law and evidence courses, coaching lectures and on-line Study Tool for Examination Preparation (STEP) are offered to the examiners as training preparation tools.

An in-depth review of the work of primary examiners is conducted after three years to ensure that primary examiners maintain the knowledge, skills and abilities necessary to perform high quality examinations.

#### *Patent Reviews*

USPTO’s Office of Patent Quality Assurance (OPQA) has implemented targeted reviews of examination processes or functions that are perceived to potentially be problematic trends. These reviews provide a means to validate the accuracy and magnitude of the most significant examination process complaints, to establish a baseline of current performance in the targeted area as well as a basis to establish performance targets for improvement plans.

The reviews are conducted on a sample designed to provide statistically valid data and yield an assessment of the current level of performance and the supporting review data with respect to the identified examination process or function. Based on input on potential areas for consideration obtained through customer satisfaction survey data and other input from applicants and practitioners, the areas of final rejection practice, Request for Continued Examination (RCE) practice, search quality and restriction practice were identified for review during fiscal year 2007. Fiscal year review findings are summarized at the Corps and Tech Center levels and OPQA consults with the Technology Centers to develop and/or implement improvement plans, as appropriate.

In October 2006, OPQA instituted an in-depth analysis of the search quality in applications selected from specific Art Units within each Technology Center in order to positively identify root-cause problems related to search quality and to identify and share best practices. Art Units subject to review were selected by the Technology Centers on the basis of perceived need, taking into account the findings of quality assurance programs in place within the Technology Centers and the OPQA.

Based upon the review findings, training tailored to the specific needs and technical subject matter of the individual Art Units is developed and delivered to the unit in an interactive format. Training is a collaborative effort between OPQA, Technology Center managers and search experts from the Scientific and Technical Information Center and covers topics including search strategy, claim interpretation, search tools and effective search techniques.

*Question.* The remediation plan you presented to the Subcommittee discussed a number of initiatives devoted to improving retention rates of staff. What progress has PTO made in instituting these initiatives and when will we begin to see measurable progress in improving retention rates of examiners?

The USPTO has already achieved notable successes in patent examiner retention efforts; during fiscal year 2007 our targeted strategies focusing on first-year attrition were very successful. First-year attrition is the highest attrition year for nearly all businesses and has historically averaged 20 percent at the USPTO. In 2007, the

USPTO reduced the overall first-year attrition rate to 15 percent. Further, in some hard-to-hire areas where we targeted recruitment bonuses, the first-year attrition rate was cut in half—to 10 percent.

Additional relevant retention facts include the following:

- The USPTO's overall, organizational attrition rate (8.5 percent) is lower than the average attrition rate for Federal workers (11.2 percent).
- The average attrition rate for USPTO patent examiners with 0–3 years experience is 15.5 percent. The average attrition rate for USPTO patent examiners with 3–30 years experience is 3.95 percent.
- The attrition rate of patent examiners with 0–3 years experience, though measurably higher than the rest of the patent corps, appears to be well below the attrition rate experienced by similarly situated entities hiring more than 1,000 engineers in a year.
- Examiners with the highest production requirements have the lowest attrition rates, and the examiners with the lowest production requirements have the highest attrition rates. In fact, 70 percent of all work in fiscal year 2007 was done by examiners with 3 or more years of experience who exceeded their production goals by an average of 8 percent and had an average attrition rate of 3.95 percent.
- 60 percent of all patent examiners exceeded their production requirements by at least 10 percent in fiscal year 2006.

*Question.* PTO's management continually states that examiners are leaving for better opportunities, when in fact the GAO's survey revealed that 67 percent of examiners who left cited the workload and production quotas as their primary reason for leaving. Why is PTO management in a state of denial over the reasons examiners are leaving?

*Answer.* The GAO's data was based on its survey of current employees, and asked these current employees to speculate (from a preset list of possible answers) regarding the primary reason they would consider leaving were they do leave. Under these parameters, those surveyed identified production goals as among the primary reasons they would leave the USPTO if they did leave.

As you can see, the approach used in the GAO survey is not the same as asking people who actually chose to leave why they are leaving (or have left).

The USPTO conducts actual exit interviews—as opposed to speculative interviews—with employees who do choose to leave. Based on the information provided to us by employees who are actually leaving the agency, we have enhanced our hiring and recruitment process.

In 2006, the USPTO started a focused effort on exit interviews, to help better determine why employees who actually leave the USPTO decide to do so. The exit interviews are voluntary, but the data indicate that—even though attrition is relatively low after the first three years—room for improvement remains. Senior employees most frequently cited personal reasons and management issues when asked for the primary reason they were leaving. The USPTO has held off-site management conferences for two consecutive years to enhance communication and leadership skill sets.

The GAO report draws attention to issues that are of paramount importance and the USPTO recognizes that attrition of patent examiners can impair the effectiveness of its hiring efforts. However, we do not observe a direct link between production requirements and attrition. For example, examiners with the highest production requirements have the lowest attrition rates, and the examiners with the lowest production requirements have the highest attrition rates. Also, 70 percent of all work in fiscal year 2007 was done by examiners with 3 or more years of experience who exceeded their production goals by an average of 8 percent and had an average attrition rate of 3.95 percent.

#### ECONOMIC DEVELOPMENT

*Question.* What data did you use to determine that \$8.7 million would meet the nation's needs for rural economic development?

*Answer.* From 2001–2007, EDA invested approximately \$1 billion or 62 percent of its total investments in rural communities. Although EDA does not have a program specifically targeted for rural communities, rural areas typically receive 50 percent or more of the agency's total investments annually. We do not anticipate a substantial change in fiscal year 2009.

*Question.* Given the proposed cut to public works grants it would seem logical that there should be a corresponding cut to EDA's salaries and expense account. Why were salaries not cut or is this just an indication that this request should not be taken seriously?

*Answer.* The increase in the Salaries and Expenses (S&E) account is necessary for EDA to maintain its full staffing level of 170 full time equivalents (FTE). EDA's staff performs multiple duties across its programs, not just evaluating and processing new grants. Therefore, maintaining EDA's current staff level is necessary to provide assistance to communities and maintain current programmatic functions.

Since 2001, EDA's S&E account has remained virtually flat. Meanwhile, EDA's non-personnel operating costs—many of which, like computer security expenses, are inflexible—have increased by 45 percent. EDA also faces annual personnel cost increases in its efforts to maintain an effective workforce. The lack of necessary funding increases in the S&E account to offset increases in non-personnel operating costs, has represented an effective \$1.5 million annual cut in EDA's operating budget. Without the increase in S&E proposed in the fiscal year 2009 request, EDA may have to reduce staff.

While EDA programs are flexible and scalable—we can “ramp up” operations, as well as “ramp down” based on available funds—the agency nonetheless needs an appropriate level of funding to maintain its existing organizational structure as directed by Congress.

*Question.* Your testimony states that the proposed reduction for economic development assistance is done in order to support other priorities. What are those other priorities?

*Answer.* In a difficult budget environment, the Administration has made tough choices to rein in spending to eventually balance the budget. Areas such as homeland security and the 2010 Decennial Census exhibit pressing needs that necessitate these difficult choices.

#### ELIMINATION OF MEP FEDERAL FUNDING

*Question.* The Administration again proposes devastating cuts to the one federal program specifically designed to assist manufacturers.

Can you explain the rationale for the cut to the MEP?

*Answer.* Elimination of federal funds to MEP centers could be compensated through a combination of increased fees derived from the benefits accrued by individual companies and cost-savings in the operations of the centers. This would move the centers to a self-sustaining basis. The fiscal year 2009 President's budget request focuses on NIST's core measurement science and standards activities in our laboratories that impact entire industries or entire sectors of the economy—and where Federal dollars can make the biggest impact on innovation and competitiveness. The focus of the fiscal year 2009 budget supports this principle by increasing NIST Core activities, which increases by \$115 million (+22 percent) over fiscal year 2008.

*Question.* Your testimony states that the request “includes \$4 million to transition the center to a self supporting basis”.

Since this is a partnership with the states have you engaged MEP state partners on this decision?

*Answer.* NIST shared the fiscal year 2009 President's budget for MEP with all MEP centers.

*Question.* Can you share the analysis that went into the determination that the network will survive without federal cost share?

*Answer.* With sufficient support from local resources along with increased fees from the manufacturing customers, the centers could remain operational.

#### DIGITAL TRANSITION

*Question.* I have received constituent letters requesting information about the coupon program. The letters indicate confusion among average citizens regarding the transition to digital and where to request a coupon for a converter box.

What is Commerce doing to educate consumers? With a limited budget for education and outreach what efforts are you undertaking to leverage your efforts? Should we provide additional funding in the supplemental to enhance education and outreach efforts?

*Answer.* NTIA's consumer education campaign—coupled with the over \$1 billion commitment from industry—is working. According to a recent survey by the Consumer Electronics Association, public awareness of the DTV transition grew 80 percent between August 2006 and January 2008, from 41 percent to 74 percent. Given consumer education activities have intensified since the beginning of 2008, we would expect consumer awareness to continue to increase. In addition, robust demand for converter box coupons, including demand from over-the-air reliant households, is a strong indication that consumers are learning about their options and

taking the necessary action to ensure their TV sets continue to operate after the digital transition.

Members of the industries most directly affected by the transition—television broadcasters, cable system operators, and consumer electronics retailers—are investing heavily to ensure that their viewers, subscribers and customers are made aware of the transition. Their efforts, targeted at the general population, have been very successful in raising consumer awareness and have enabled NTIA to focus its resources, funding, and activities on reaching particular groups that are likely to rely more heavily on over-the-air television than others. These include seniors, minorities, rural residents, people with disabilities, and economically disadvantaged households.

NTIA's strategy for its consumer education campaign is simple and straightforward: use earned media and leverage trusted partners that possess pre-existing relationships with members of our target groups to deliver tailored messages about the transition and the Coupon Program. NTIA has instituted a proactive campaign to educate consumers about the role of the Coupon Program in the DTV transition, leveraging relationships with consumer groups, community organizations, federal agencies, and members of affected industries to inform consumers of their options. NTIA is collaborating with more than 200 partner organizations, including social service and community organizations with ties to seniors, rural residents, minorities, and disabled communities, as well as a variety of federal agencies that communicate directly with these constituent groups. As of March 31, 2008, broadcast and print coverage of the Coupon Program has reached over 200 million media. This is coupled with the National Association of Broadcasters' campaign which aims to generate 30 billion audience impressions of the broader digital television transition before February 17, 2009.

Additionally, the Federal Communications Commission has received \$2.5 million in fiscal year 2008 and requested an additional \$20 million for fiscal year 2009 specifically for consumer education about the DTV transition. Based upon multiple surveys that reveal a steep increase in consumer awareness about the transition and the sheer number of households that have ordered coupons to date (as of April 25, 2008, 6.2 million households have ordered 11.9 million coupons), these combined consumer education efforts are working. NTIA is confident that these public and private sector investments in DTV consumer education will be sufficient to educate all consumers about the DTV transition and the TV Converter Box Coupon Program.

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#### QUESTIONS SUBMITTED BY SENATOR RICHARD C. SHELBY

##### 2010 DECENNIAL EFFECTIVENESS RATING

*Question.* I have serious concerns about how the Administration and the Department have been monitoring the progress of the 2010 Census. The Performance and Accountability Report for the Department submitted November 15, 2007, gave the Decennial Census a moderately effective score of 83 percent. It also says that the Census Bureau is ensuring oversight of critical information technology services.

Given where we are today, Mr. Secretary, would you rate the Census Bureau's management of the Decennial Census as moderately effective?

*Answer.* Both Secretary Gutierrez and Dr. Murdock have testified that the Census Bureau's failure to effectively communicate its expectations to the contractor has been a major contributor to the current situation.

Given these concerns, both the Census Bureau and the Department of Commerce have made substantial management changes to address the challenges facing the 2010 Census. We are working to ensure that there is clear accountability and that we have set specific leadership expectations. This includes better integration between Census and Harris personnel; rapid decisionmaking; real-time problem solving; and improved transparency, oversight, and communication.

We are taking this very seriously and hope these changes and others reflect our concern and ultimately our resolve to better serve the American people. Secretary Gutierrez is personally engaged in this matter and will continue to devote time to this issue until he can be assured that we have established a sustainable and achievable path forward to a successful 2010 Census.

##### MANAGEMENT REFORM

*Question.* What are you doing to ensure that the Census Bureau has leadership capable of solving the problems with field automation and conducting a successful 2010 census?

Answer. We have a new Acting Associate Director for Decennial Census, Arnold Jackson. Other moves are under consideration. We are taking a series of steps to strengthen management, including:

- Instituting a new management approach that will strengthen planning and oversight relative to risk management, issue identification, product testing, communications, and budget/cost management.
- Increasing the intensity and pace of senior management involvement, including daily status assessments and problem resolution sessions chaired by the Associate Director, weekly status assessment meetings with the Director and Deputy Director, periodic but unscheduled reviews by MITRE and Department of Commerce specialists in IT, project management, and contracting.

We also are developing a comprehensive plan that consolidates the recommendations from several studies and reviews, including MITRE, GAO, our own Blue team, the Barron Task Force, and the Secretary's expert panel. Some of the action items we are committing to are:

- Comprehensive risk management such that the higher impact risks are known as early as possible and elevated to proper levels for timely resolution.
- Strengthened leadership in the Decennial Census Program so that stakeholders, contractors, staff, and management are unified and focused on the issues that drive a successful census.
- Transitioning from a planning phase of the Decennial cycle to an action-oriented operational phase by shortening decision cycles, cutting internal redtape, and pushing more problem resolution responsibility down to our managers.
- Adhering to a structured plan of action to see that the things we have not done well do get better as rapidly as we can.

The FDCA PMO and the Software Assessment Team have agreed to a plan to strengthen oversight of the contractor, and the plan is known as our "Insight Plan". The PMO launched implementation of the Insight Plan a few weeks ago, and some of the key steps of that plan are:

- A much closer review of the contractor's software earlier in the development and test cycle.
- Permanent Census staff at the contractor's Largo facility and staff embedded with the contractor at key points in the development cycle from requirements clarification to product release for final field hands on testing.
- Improving the contractor's test cases by including more realistic census events and operationally characteristic data.
- Involving census users of the information collected by the handheld system in the process of review and approval of contractor products before they are final. This will greatly increase stakeholder participation and bring about rapid feedback needed for problem correction.

MITRE REVIEW JUNE 2007

*Question.* In June of last year, MITRE produced a report recommending that Census immediately stabilize the requirements for data management and to co-locate Census and contractor staff. This report is in stark contrast to the information senior Census officials provided in December when they reported that this procurement was moving forward as expected. These same Census officials then submitted over 400 changes to the contractor less than a month after assuring this Committee that they had this procurement under control.

Do you believe the Census now understands the requirements necessary to acquire the handhelds that they contracted for in 2006?

Answer. Although we have decided to drop plans for using the handheld computers for nonresponse follow-up in 2010, we still will use them for the Address Canvassing operation that will begin one year from now in May 2009. We tested the use of the contractor's Address Canvassing solution last year, and while we experienced some problems, we believe the contractor now has a full set of final detailed requirements in place to ensure success for this operation next year. We continue to work with the contractor regarding new or revised requirements resulting from the shift to paper-based NRFU, and the other contract scope changes that were part of the recent decision announced by Secretary Gutierrez.

At the time of contract award in March 2006, both the Census Bureau and the contractor were fully aware this strategy would mean a tight schedule for requirements development, system design, system development, and deployment. The initial requirements strategy at that point was to develop remaining requirements in a two-step process. First, based on results from the 2004 and 2006 Census Tests, we would provide detailed Dress Rehearsal requirements for our major operations. Then, based on lessons learned from the Dress Rehearsal, we would make adjust-

ments to those detailed requirements for 2010 Census operations, as well as develop the detailed requirements for those operations that could not be included in Dress Rehearsal (e.g., enumeration in Puerto Rico; enumeration in remote areas).

We were moving on that path when, in October 2007, we had to de-scope many paper-based dress rehearsal activities in order to have sufficient funds to keep this contract (and our data capture systems contract) on schedule in developing critical applications and interfaces planned for the Dress Rehearsal. Until that point, we still were planning to use our Dress Rehearsal experiences with various operations to help finalize detailed requirements for the FDCA contractor. However, because most of those operations had to be cancelled, in mid-November 2007, the contractor requested, and we agreed, to move forward immediately to deliver a final set of all detailed requirements. This effort was completed, and we delivered them to the contractor on January 16, 2008. It was not until the contractor delivered their cost estimate (to complete all these requirements) at the end of January that the full scope of our problem came into focus.

*Question.* Mr. Secretary, can you provide this Committee, in writing, a timeline that shows on which dates actions were taken by the Census to address the issues identified in the June MITRE report?

*Answer.* After reviewing the June 2007 MITRE report the Census Bureau:

- Established a temporary FDCA requirements “SWAT Team” to streamline, integrate and finalize all Dress Rehearsal requirements for FDCA, including better integration of the contractor’s and Census Bureau’s schedules.
- Expanded the FDCA Strategy Group to include all division chiefs critical to the FDCA program. This group began meeting on a weekly basis to discuss and resolve FDCA issues and establish priorities.
- With MITRE’s assistance, redefined the process for finalizing 2010 requirements to ensure a more structured, systematic, and integrated approach.
- Clarified roles between the FDCA Project Management Office (responsible for contract management) and the Decennial Management Division (responsible for managing the entire 2010 Census program).
- Redefined the FDCA contract Change Management Process with the goal of ensuring additional control of requirements changes.
- Established monthly Executive Management meetings in addition to the monthly Program Management Reviews. These meetings consisted of executives and key managers from both the FDCA contractor and the Census Bureau to discuss and resolve critical issues.
- With MITRE’s assistance, redefined and began implementation of a more structured Risk Management Process.

In late November 2007, the Deputy Director of the Census Bureau initiated a comprehensive assessment to determine the status of the program and to better understand any issues or concerns as the program approached key 2010 Census milestones. This assessment included a series of wide-ranging meetings with Census Bureau staff directly involved in the FDCA program. The Deputy Director also met with Harris Corporation, the company developing the FDCA system, and MITRE Corporation, an information technology firm under contract with the Census Bureau. MITRE’s role was to provide an internal, independent assessment of the information technology systems in the decennial programs and also IT systems in the Census Bureau. The Census Bureau also established an Integrated Project Team (IPT) made up of key, high ranking 2010 Census managers. The IPT was tasked with producing the final set of FDCA program requirements by mid-January 2008.

This effort was completed, and the requirements delivered on January 16, 2008. At the end of January, the contractor provided feedback on these requirements, including their initial, high-level estimate of the additional costs that would be needed to meet all of the 2010 Census requirements.

At this point, the full scope of our problem came into focus. New Census Bureau Director Steve Murdock then established a FDCA Task Force, chaired by former Deputy Director William Barron, and made up of some of the Census Bureau’s and the Department’s senior technical and management officials, as well as representatives from MITRE, to help develop a strategy to address these problems. The Task Force outlined four options for moving forward. All of these options called for using the handheld computers for Address Canvassing, and all but one (the baseline) assumed we would revert to a paper-based NRFU operation. For the other major components of FDCA, each of the options considered a combination of responsibilities between the contractor and the Census Bureau in terms of capabilities, expertise, staffing, timing, and costs.

The work of the task force was then turned over to the Expert Panel established by the Secretary and made up of two former Census Bureau Directors, a former Associate Director of the Census Bureau, two information technology experts, and a

former Member of Congress. After deliberating with this panel, the Secretary recommended the plan that he described in his testimony.

As to management steps now being taken, we have a new acting Associate Director for Decennial Census, Arnold Jackson. Other moves are under consideration. We are taking a series of steps to strengthen management, including:

- Instituting a new management approach that will strengthen planning and oversight relative to risk management, issue identification, product testing, communications, and budget/cost management.
- Increasing the intensity and pace of senior management involvement, including daily status assessments and problem resolution sessions chaired by the Associate Director, weekly status assessment meetings with the Director and Deputy Director, periodic but unscheduled reviews by MITRE and Department of Commerce specialists in IT, project management, and contracting.

We also are developing a comprehensive plan that consolidates the recommendations from several studies and reviews, including MITRE, GAO, an internal expert software assessment team, the Barron Task Force, and the Secretary's expert panel. Some of the action items we are committing to are:

- Comprehensive risk management such that the higher impact risks are known as early as possible and elevated to proper levels for timely resolution.
- Strengthened leadership in the Decennial Program so that stakeholders, contractors, staff, and management are unified and focused on the issues that drive a successful census.
- Transitioning from a planning phase of the Decennial cycle to an action-oriented operational phase by shortening decision cycles, cutting internal redtape, and pushing more problem resolution responsibility down to our managers.
- Adhering to a structured plan of action to see that the things we have not done well do get better as rapidly as we can.

These management activities are described in our "Program Management Plan" to be finalized in early May.

The FDCA PMO and the Software Assessment Team have agreed to a plan to strengthen oversight of the contractor, and the plan is known as our "Insight Plan". The PMO launched implementation of the Insight Plan a few weeks ago, and some of the key steps of that plan are:

- A much closer review of the contractor's software earlier in the development and test cycle.
- Permanent Census staff at the contractor's Largo facility and staff embedded with the contractor at key points in the development cycle from requirements clarification to product release for final field hands on testing.
- Improving the contractor's test cases by including more realistic census events and operationally characteristic data.
- Involving census users of the information collected by the handheld system in the process of review and approval of contractor products before they are final. This will greatly increase stakeholder participation and bring about rapid feedback needed for problem correction.

#### USE OF HANDHELDS

*Question.* The primary innovation that was going to create significant savings and efficiencies for the 2010 Census revolves around the handheld computers and moving away from a paper based system. I would like to know what your plans are for dealing with the problems of the handheld computers and getting the 2010 census back on track.

Will the handhelds still be used? When is the latest date you can make this decision?

*Answer.* On April 3, 2008, Secretary Gutierrez testified before the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies that he had decided to discontinue plans for using handheld computers for the 2010 Census nonresponse follow-up operation, and revert to the paper-based approach used in previous censuses. He also testified that we still plan to use these devices to conduct the nationwide Address Canvassing operation next year.

*Question.* When will the Department determine if the handheld computers will be used for any portion of the 2010 Census?

*Answer.* Please see previous response.

#### PAPER NON-RESPONSE FOLLOW UP

*Question.* Will the Census have to go back to paper for non-response follow up? When will this decision have to be made?

Answer. On April 3, 2008, Secretary Gutierrez testified before the House Appropriations Subcommittee on Commerce, Justice, Science, and Related Agencies that he had decided to discontinue plans for using handheld computers for the 2010 Census nonresponse follow up operation, and revert to the paper-based approach used in previous censuses.

#### ADDITIONAL COSTS FOR CENSUS

*Question.* This Committee has been supportive of the Bureau of the Census and its plans for the 2010 Census. However, it is obvious that more funds than anticipated will be required to conduct what is currently the most expensive census in our nation's history. GAO has estimated that the increase will be between \$600 million and \$1.2 billion. Can we anticipate a supplemental request from the Department for fiscal year 2008 to accommodate the difficult position the Census finds itself in today?

Answer. No, the Department will not be submitting a supplemental request to cover the funding shortfall in fiscal year 2008 related to the 210 Census. The Administration believes that the fiscally responsible action to address this difficult position is to work within existing resources at the Department. To that end, I have proposed transfers from other Commerce bureaus to provide the necessary resources for the Census Bureau. While this was a difficult decision, I believe that avoiding mission failure of a constitutionally-mandated operation at the Census Bureau warranted lesser impacts among our other bureaus.

*Question.* Will there be a need for a budget amendment for fiscal year 2009 for the 2010 Census?

Answer. Yes, addressing the issues within the 2010 Census will require a budget amendment for fiscal year 2009, as funding requirements for that year have grown beyond the requested level in the fiscal year 2009 President's budget submission.

#### NPOESS—VIIRS ISSUES

*Question.* Last year we discussed the failures of the National Polar-orbiting Operational Environmental Satellite System (NPOESS) which was scrutinized for its mismanagement and lack of oversight. Since that time NPOESS was restructured, but problems have occurred on a critical instrument the Visible Infrared Imager (VIIRS).

Can you elaborate more on the problems that exist?

Answer. The NPOESS Executive Committee, working with the NPOESS Program Executive Officer, has implemented a number of steps to address the management of the program. The key NPOESS sensors are currently in ambient testing, when several test anomalies are expected to be uncovered and addressed.

One of the anomalies uncovered is the likelihood of performance degradation to ocean color/chlorophyll and aerosol measurements on the first VIIRS instrument due to issues with the Integrated Filter Assembly (IFA). Using the current IFA, aerosol will be degraded from original levels of performance measurements but will still be at requirement specification, so ocean color will be the only measurement greatly impacted. Because of this limited degradation of capabilities and the risk reduction nature of the NPP mission, the NPOESS Executive Committee (EXCOM) directed the NPOESS Integrated Program Office (IPO) to: Fly the first sensor on NPP with the existing IFA, accepting the existing performance degradation for that mission; and resolve VIIRS IFA problems before flying it on NPOESS C1.

#### NPOESS LAUNCH DATE

*Question.* What is your degree of confidence that the first NPOESS launch date will be met and if your confidence is high, why?

Answer. There is a high degree of confidence that the NPOESS 2013 launch date will be met. The confidence is derived from program metrics which at this time show all program segments remain on schedule.

#### NPOESS—VIIRS CONTINGENCY PLANNING

*Question.* What are the contingencies if VIIRS continues to have problems?

Answer. The Integrated Program Office (IPO) has developed a plan, with the prime contractor, which established an achievable delivery schedule in advance of the April 2009 commitment with margin to that date. The IPO monitors that margin daily. In addition, the PEO holds bi-weekly executive reviews of the Visible/Infrared Imager/Radiometer Suite (VIIRS) status with the contractors and government leadership to ensure appropriate focus is placed on this critical sensor program. We



believe these steps will allow the IPO to contend with future issues regarding VIIRS.

#### NPOESS—CROSS TRACK INFRARED SOUNDER ISSUES

*Question.* What is the status of the other critical instrument, the Cross Track Infrared Sounder, that was having problems?

*Answer.* Following the frame failure in 2006, the frame was redesigned and all Cross-track Infrared Sensor (CrIS) components were inspected and fixed, as needed. The CrIS unit has passed its vibration testing and is in its final thermal vacuum tests. At this time, the instrument is expected to be delivered in mid-June 2008, well in advance of its August 2008 need date for spacecraft integration.

#### NPOESS—COST AND SCHEDULE GOALS

*Question.* Can we reasonably expect the program to stay within the new cost and schedule goals?

*Answer.* Although the NPOESS program is undertaking the most complex operational environmental satellite system ever built by the United States; the program expects to deliver within its restructured budget and schedule goals. The cost estimate provided at the time of the June 2006 Nunn-McCurdy certification used to establish the restructured budget reflected the results of an intense independent review of the Program's technical requirements and associated costs. The Integrated Program Office (IPO) has based the restructured NPOESS program budget and contract on the independent cost estimate developed by the Department of Defense Cost Analysis Improvement Group (CAIG). The CAIG estimate takes into account the technical, schedule, and cost risk remaining on the program to ensure adequate resources are available to fully respond to the "unknown unknowns" that are continuous challenges to any major development.

#### NOAA IN THE GULF OF MEXICO

*Question.* Although NOAA's 2009 budget request boasts a \$213 million increase, it yet again continues to short-change the Gulf of Mexico. I am disappointed that NOAA has continually underfunded weather infrastructure, research, and fish and habitat growth in the Southeast. The Gulf Coast has severe weather events, we have fishing disasters, we have underutilized research capabilities just like everyone else, yet I see no money in this budget to help the people of the Gulf receive any improvement in the dedication of services from NOAA.

What will it take for NOAA to make the Gulf of Mexico and the southeast a priority?

*Answer.* NOAA has a diverse mission ranging from managing fisheries to predicting severe weather. The Administration's request provides for a balanced set of priorities that sustains core mission services while also addressing our highest priority program needs. As part of that mission, NOAA's fiscal year 2009 budget request continues to fund many ongoing efforts in the Gulf of Mexico and southeast region. For example, the request includes \$74.2 million in support of fisheries research and management, habitat conservation and restoration, and fisheries enforcement; \$5 million to support the Gulf of Mexico Alliance for increased regional collaboration to enhance the environmental and economic health of the Gulf of Mexico; and \$7.4 million for continued operations of the three National Marine Sanctuaries in the region. In addition, the fiscal year 2009 request includes \$19.5 million in new increases across NOAA for hurricane modeling improvements, research, and operations, which contributes to NOAA's overall spending of over \$300 million a year for hurricane warning and forecast efforts throughout the southeast.

#### WEATHER INFRASTRUCTURE IN THE SOUTHEAST

*Question.* When will the Southeast receive state of the art NEXRAD radars and Advanced Weather Interactive Systems that are in other parts of the country?

*Answer.* NEXRAD radars were installed at the Weather Forecast Offices (WFO) in the Southeast United States during the mid-1990s. As with the rest of the United States, the NEXRAD radars in the Southeast are all part of the same service configuration; they all go through the same technology refreshes every several years. Since 1996, AWIPS has been utilized not only in the Southeast but at all of the WFOs across the United States. As with the NEXRAD program, all AWIPS are part of the same service configuration and are on the same technology refresh cycle. NWS appreciates the support it has received from members of Congress with these programs and because of this support we have been able to keep these programs state of the art.

## FREE TRADE AND SHRIMP IMPORTS

*Question.* Recently, the Administration has called for expanding free trade agreements with Latin America, particularly with Colombia and Panama. In fact, last week you led a delegation to Colombia to discuss a U.S.-Colombia Trade Promotion Agreement. The expanded agreements would eliminate tariffs on American exports and provide duty-free access for American agricultural commodities. However, many people along the Gulf Coast are still concerned about Latin America's agricultural exports, particularly that of farmed shrimp. Shrimp imports from Latin American countries continue to rise despite confirmed antidumping activities that your Department investigated.

Has your department examined Colombia and Panama's shrimp export activities prior to these recent trade discussions, and if so what were your findings?

What protections are in place for the U.S. industry?

*Answer.* The Office of the United States Trade Representative reports no shrimp-related trade issues with Panama or Colombia—not before, during, or after the FTA negotiations with these countries. In 2007, Colombia exported shrimp (of various product types) to the United States at a value of \$12.9 million. During the same year, Panama exported shrimp (of various product types) to the United States at a value of \$36.7 million.

Brazil and Ecuador are the countries in Latin America in which the Department issued antidumping (AD) orders on frozen warmwater shrimp imports to the United States. In order to comply with the WTO panel decision regarding the Department's "zeroing" methodology, the AD order on frozen warmwater shrimp imports from Ecuador was revoked on August 15, 2007. According to U.S. import data, Brazil did not export any warmwater shrimp in 2007 that would be subject to the AD order. We reviewed the harmonized tariff code and found that no tariffs or quotas exist for shrimp imported from Colombia or Panama except for food preparations that include shrimp as an ingredient. As a result, the Free Trade Agreement extension to Colombia or Panama would have no visible effect on the U.S. Gulf of Mexico shrimp fishery.

## INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

*Question.* The Internet Corporation for Assigned Names and Numbers, "ICANN", is responsible for making policy concerning the Internet's global address system. While I support the idea of the Internet being managed by a non-government entity, I have become aware that ICANN has been pushing very hard to sever its ties completely from the Department. I have also heard from industry officials who have raised concerns that while ICANN makes decisions that have the potential to affect billions of dollars in commercial transactions, the organization lacks an effective mechanism for redress by companies affected by those decisions.

Do you think it is wise to allow ICANN to sever all of its ties to the Department?

*Answer.* The Joint Project Agreement (JPA) between the Department of Commerce and ICANN will not be terminated before its September 2009 expiration as was suggested in ICANN's submission to the Notice of Inquiry (NOI) issued by the National Telecommunications and Information Administration (NTIA). The JPA required the Department of Commerce to conduct a mid-term review of progress achieved on each ICANN activity and responsibility contained in the JPA. NTIA, on behalf of the Department, conducted this mid-term review which included a solicitation of public comments through the NOI and a public meeting. NTIA received 171 comments, the majority of which did not support early termination of the JPA. All comments to NTIA's NOI can be found at the following link: <http://www.ntia.doc.gov/ntiahome/domainname/jpamidtermreview.html>.

*Question.* Do you think ICANN is a mature enough organization to handle this enormous responsibility on its own?

*Answer.* On April 2, 2008, NTIA issued a statement on the mid-term review summarizing that the record demonstrates general consensus that: (1) ICANN is the appropriate technical coordinator of the domain name and addressing system (DNS) and has made significant progress in several key areas; and (2) important work remains to increase institutional confidence through implementing effective processes that will enable long-term stability, accountability, responsiveness, continued private sector leadership, stakeholder participation, increased contract compliance, and enhanced competition.

As previously stated in the "U.S. Principles on the Internet's Domain Name and Addressing System," the Department of Commerce remains committed to taking no action that would have the potential to adversely impact the effective and efficient operation of the DNS.

NTIA's statement on the JPA can be found at the following link: [http://www.ntia.doc.gov/ntiahome/domainname/ICANN\\_JPA\\_080402.pdf](http://www.ntia.doc.gov/ntiahome/domainname/ICANN_JPA_080402.pdf).

*Question.* Do you think it would be wise to release ICANN from its contractual obligations before redress mechanisms are in place?

*Answer.* As noted above, important work remains for ICANN in order to increase institutional confidence through implementing effective processes that will enable long-term stability, accountability, responsiveness, continued private sector leadership, stakeholder participation, increased contract compliance, and enhanced competition. The Department of Commerce strongly encourages all stakeholders to work with ICANN to address these issues and others that may be of concern, including redress mechanisms.

#### GOES-R OVERSIGHT

*Question.* Not only are there serious issues with NPOESS, there are serious failures of the Geostationary Operational Environmental Satellites Program (GOES-R). While this program has been restructured and finally seems to have some management controls in place, I am disappointed with the revised program plan. When I compare the new goals with the program's original prospects, I see that the plan has lost 2 of the 4 planned satellites, has added 2 years to the development cycle, and has a cost increase of \$800 million.

*Answer.* There have been no identified failures with respect to the GOES-R program. GOES-R has recently completed Program Definition and Risk Reduction (PDRR), a phase where requirements are traded against design concepts, cost and schedule in order to formulate appropriate scope, cost and schedule prior to major procurements.

At completion of the program's work, independent reviews of cost estimates, program business organization and technical structures were performed successfully. Only at the completion of program work and independent validation does NOAA consider a program ready for initial baseline which occurs at Key Decision Point (KDP). The GOES-R Program passed KDP in January 2008 when the Secretary of Commerce delegated the authority to proceed to the Under Secretary of Commerce for Oceans and Atmosphere.

Satellite acquisitions cannot be accurately baselined until after the developing contractor is formally onboard. NOAA uses the Preliminary Design Review (PDR) as the formal milestone since it contains all necessary factors to accurately establish a cost and schedule baseline.

*Question.* How are responsibilities for this program divided between NOAA and the Department?

*Answer.* The Department of Commerce retains ultimate authority for the GOES-R program. On December 21, 2007, the Department delegated Milestone Decision Authority for GOES-R to the Under Secretary for Oceans and Atmosphere (the NOAA Administrator). With this delegation, however, the Department set forth a number of requirements that ensures its ability to conduct appropriate oversight of the program. The Department has responsibility and approval authority over the ground segment acquisition strategy and complete authority over the budget through the annual budget formulation process. The Program also reports ongoing progress on a quarterly basis to the Department of Commerce Assistant Secretary for Administration/Chief Financial Officer. The Program has also begun providing the Deputy Secretary a bi-weekly status. There is also a Department of Commerce Attorney on site at the GOES-R Program Office as the Program Legal Counsel. NOAA's Program Management Council (PMC) is NOAA's primary oversight body for the GOES-R program. At monthly program reviews, the program provides an update of its status and provides detailed explanations of technical and budget issues and risks. The Department also has insight into the PMC activities and routinely sends representatives to observe PMC meetings. The PMC is chaired by the Deputy Under Secretary for Oceans and Atmosphere.

#### GOES-R KEY DECISION POINT

*Question.* How did you ensure that the recent GOES-R Key Decision Point to proceed was based on complete and accurate information?

*Answer.* A number of independent bodies reviewed the program before the Key Decision Point (KDP) decision was made. An Independent Review Team (IRT) of senior satellite acquisition experts (with over 250 years of combined satellite acquisition experience) reviewed the program starting in 2006. The IRT's November 2007 assessment determined the program, with its contracts divided into flight and ground segments, was technically and programmatically ready to proceed into the next acquisition phase. An Independent Cost Estimate (ICE) review was deemed

sufficiently close to the Program Office Estimate to validate the probable cost of the program. These were independent bodies. Within the Department of Commerce and NOAA, numerous reviews were conducted leading up to the KDP decision and all decision makers were satisfied that the program had provided complete and accurate information and that the program was indeed ready to proceed.

#### GOES—R COST AND SCHEDULE GOALS

*Question.* Can we reasonably expect the program to stay within the cost and schedule goals identified in the President's fiscal year 2009 budget request?

Answer. For a two satellite program, we are confident the program can be executed within the requested funding and schedule profile, assuming the planned budget profile in the President's fiscal year 2009 budget request.

#### FISH PROTECTION PRIORITIES

*Question.* The NOAA budget proposes to spend \$10 million on 79 Atlantic salmon. That is \$130,000 per fish and a 92.3 percent increase for this program. While I support programs that assist fish populations, and I want to support this program, I am at a loss why there is not a similar program to assist the Gulf of Mexico and its large variety of fish, shrimp and oyster populations that are stressed and need assistance. Looking at your budget request, I see no new money or resources that are dedicated to gulf coast fisheries or to gulf coast research.

How much do we spend on any one species of fish in the Gulf?

Answer. The Annual Report of the U.S. Atlantic Salmon Assessment Committee reports that 1,480 adult salmon returned to U.S. rivers in 2006. Of this total, 79 adults were counted as returns to the Gulf of Maine distinct population segment (DPS) and 1,044 adults were counted on the Penobscot River. The Gulf of Maine DPS was listed as endangered in 2000 and is composed of small coastal rivers in Maine. The 2006 Status Review recommends that the Gulf of Maine DPS be expanded to include the large rivers in Maine (Penobscot, Kennebec and Androscoggin). It is important to note that these are adult counts only and are not population assessments. A full population assessment with totals for all life stages (adults, fry, parr, smolts, post smolts) is not available at this time.

Because of the sheer number of fish, it is not feasible to estimate NMFS' spending on a per fish basis for any one species of fish in the Gulf. However, the budget does provide \$74.2 million specifically for Gulf of Mexico fishery activities—a 6 percent increase over the fiscal year 2008 enacted level.

*Question.* How much do we spend per fish on Pacific Coast Salmon?

Answer. NMFS does not prioritize funding on a per fish basis. The funds requested are not to save the existing fish, generally, the fewer the fish the more critical the need. Requested funding is an investment in the future to ensure that the number of Pacific Coast Salmon will increase—and that we will eventually be able to recover ESA listed Pacific Coast Salmon to a sustainable level, and delist them. Section 4(f) of the Endangered Species Act requires NOAA to develop and implement recovery plans for the conservation and survival of all endangered or threatened species. These plans lay out activities necessary to recover the species and provide an estimated cost to accomplish these recovery tasks.

*Question.* What is the justification for a 92.3 percent increase for this program?

Answer. The fiscal year 2009 funding amount will allow NOAA to focus conservation and recovery actions on supporting listed Atlantic salmon populations as required under the Atlantic Salmon recovery plan and re-establishing extirpated populations by addressing habitat needs in key watersheds historically used by Atlantic salmon that span five New England States. NOAA will use the additional Atlantic salmon funds to restore connectivity to fragmented habitats to enhance recovery of Atlantic salmon on an ecosystem basis. Priority will be given to projects that support listed populations to restore connectivity and recovery of ecosystem functions for the benefit of Atlantic salmon and all diadromous species in New England. Collaborative efforts will also be used to prioritize projects funded with the increase. Projects will likely include dam removals, fish passage, stream restoration, and reduction in sedimentation to salmon spawning areas. This increase will allow NOAA to fund 25 additional projects each year, which will open approximately 230 stream miles annually for use by Atlantic Salmon.

#### DATA SECURITY

*Question.* In September 2006, in response to media and Congressional requests for information on laptops lost or stolen during the previous 5 years, the Department reported the loss or theft of 214 Census Bureau laptop computers. The Commerce

Inspector General reported that the missing laptops contained sensitive information that could be recovered with tools easily available on the Internet.

How will the Census Bureau ensure that the systems involved in the decennial census, including the handhelds or even a paper census, provide adequate protection of the sensitive data collected?

Answer. The Census Bureau understands the great responsibility it has to ensure the public that the information it provides is protected to the greatest extent possible. As an outgrowth of the DOC Inspector General's report in 2006 the Bureau has looked at security controls implemented in all of its systems to ensure that they meet Federal IT security requirements and afford the level of protection to which the public should expect.

Specifically for the Decennial 2010 Census, the Census Bureau has worked to ensure that its mobile computing devices afford the best protection possible while still allowing for flexibility and ease of use. We have also begun to prepare processes and procedures to better track and account for paper forms that will be used during the Decennial operations.

All laptops used during the Decennial Census will have full disk encryption installed. This will render the information on the laptop virtually useless to unauthorized individuals in the event a laptop is lost or stolen. In addition to the full disk encryption, users will be required to enter a unique user name and password to access the laptop. The laptop will have anti-virus software installed to prevent infection and possible spread of malicious code.

The Hand Held Computing devices (HHC) will also employ technical security controls to ensure the data collected is protected in accordance with Federal IT security requirements. These devices will be protected with similar controls as implemented on the laptop with some specific differences based on the device and intended use. These additional controls include the use of biometrics (fingerprints) that must be scanned in order for the user to gain access to the device and the applications. In addition, the HHC is run using a specific mode (Windows Mobile 5.0—Kiosk Mode) which provides the ability for the program to control the applications and the user interface. This prevents the device from executing unnecessary or vulnerable operations. The HHC has had a number of capabilities which could introduce vulnerabilities either removed or blocked at the factory. The application monitors processes running on the HHC as well as critical registry settings; with this control, processes that are not authorized are unable to run. If critical system-level settings are found to be changed, they are automatically reset to the proper value.

Data collected is stored on a removable SD (sometimes called a Flash) drive. The data is encrypted using a NIST-approved encryption product which ensures that the data could not be read on another device if the SD card is lost or stolen.

All communications containing sensitive information between the Field, Decennial Offices and the Data Processing Centers (DPC) are across secure communications paths that use NIST-authorized encryption.

Paper presents a more difficult problem by its nature and the sheer volume which it will be present in the Decennial Census. The Census Bureau is responding to this challenge by increasing its awareness and training at the Field level as well as implementing checks with each shipment of paper to track its progress from start to finish. Careful records of paper shipments will be kept to make sure that in the event a package or set of paper forms is lost or misplaced, there is an accurate record of exactly what was lost, the circumstances surrounding the loss, and actions taken once the loss is discovered.

#### DATA SECURITY

*Question.* The 2010 Census will require the hiring of thousands of temporary employees. Can you offer this Committee your assurance that the background checks for these employees will be fully completed before they are invited into homes of millions of Americans?

Answer. In the 1990 and 2000 decennial censuses, the Census Bureau used Federal Bureau of Investigation (FBI) name checks to determine the suitability of all applicants for temporary Census jobs (most work for 8 weeks or less). There was virtually no criminal activity by temporary Census workers in 1990 or 2000. Accordingly, as part of the cost estimates prepared for the 2010 Census, we again assumed we would use this method to conduct background checks on all temporary workers. Although Executive Order 8914 requires that all newly hired federal government be fingerprinted within 14 days of beginning work, this Order also specifically authorizes fingerprint exemptions for temporary workers. The Census Bureau continues to study various operational approaches for conducting background checks, including risks and cost implications.

## HANDHELD TECHNICAL REQUIREMENTS

*Question.* After several discussions with the Census, it has become clear that the Census entered into the contract for 2010 Census data collection before the Census was actually certain of what the requirements for such a system would be. It is rare that when given an unknown, that the costs come in below the estimates.

Did the Census Bureau enter into a data collection contract knowing that it would cost more than expected?

*Answer.* We did not enter into this contract knowing that costs would be higher than expected. The final bids of all vendors for the contract were similar, and all were relatively close to the independent government cost estimate prepared by the MITRE Corp.

Regarding the level of requirements known at contract award, early in the decade we believed our experienced Census Bureau staff could develop and deploy the handheld computers for use in the 2010 Census. These staff did produce the solutions we tested in both the 2004 Census Test and 2006 Census Test. Although we were able to develop and use the devices well enough to determine that we could conduct field data collection on them, by 2004 we had concluded that we did not have sufficient expert resources in house to do this for the 2010 Census, so we decided to contract this effort to the private sector. At the time we prepared the RFP for the FDCA contract, our strategy was to supply high-level functional requirements to the contractor on award, and then to determine final detailed requirements based on what we learned from the 2004 and 2006 Census Tests, and the 2008 Census Dress Rehearsal.

Thus, at the time of contract award in March 2006, both the Census Bureau and the contractor were fully aware this strategy would mean a tight schedule for requirements development, system design, system development, and deployment. The initial requirements strategy at that point was to develop remaining requirements in a two-step process. First, based on results from the 2004 and 2006 Census Tests, we would provide detailed Dress Rehearsal requirements for our major operations. Then, based on lessons learned from the Dress Rehearsal, we would make adjustments to those detailed requirements for 2010 Census operations, as well as develop the detailed requirements for those operations that could not be included in Dress Rehearsal (e.g., enumeration in Puerto Rico; enumeration in remote areas).

The contract was awarded in April 2006—less than one year before the first major application was needed for the Dress Rehearsal Address Canvassing operation. We knew this was a very aggressive schedule, and to mitigate some of this risk, all of the final vendors for the contract were required to develop a prototype of the Address Canvassing device so that, upon award, they would already have initial development underway. However, after contract award, it became clear that the contractor's funding needs by fiscal year differed from what the Census Bureau had assumed in its lifecycle cost estimate for the contract. In particular, the contractor stated they needed more of the overall contract funding earlier in the cycle, including fiscal year 2006. Because the Congress had already appropriated funds for fiscal year 2006, and the President had already made his request to the Congress for fiscal year 2007, the Census Bureau had limited flexibility to address these funding issues directly. In response, the Census Bureau reprogrammed some funding to the FDCA contract, and a re-plan was developed which, among other things, delayed and extended software development into seven increments. Thus, this re-plan added additional risk to the overall development plan and strategy that the Census Bureau thought was manageable.

## HANDHELD TECHNICAL REQUIREMENTS

*Question.* When did the contractor ask for a finalized set of requirements?

*Answer.* At the time of contract award in March 2006, both the Census Bureau and the contractor were fully aware the initial requirements development strategy would mean a tight schedule for software development, system design, system development, and deployment. The initial requirements strategy at that point was to develop remaining requirements in a two-step process. First, based on results from the 2004 and 2006 Census Tests, we would provide detailed Dress Rehearsal requirements for our major operations. Then, based on lessons learned from the Dress Rehearsal, we would make adjustments to those detailed requirements for 2010 Census operations, as well as develop the detailed requirements for those operations that could not be included in Dress Rehearsal (e.g., enumeration in Puerto Rico; enumeration in remote areas).

In mid-November of 2007, however, facing a delayed, scaled-back dress rehearsal, and early 2010 Census operations not too far behind, the Harris Corporation requested that the Census Bureau deliver the final 2010 Census requirements by No-

vember 30, 2007 so that they could conduct a re-plan to align scope, schedule, and cost. These requirements were to include: Operations not planned in Dress Rehearsal, known defects in the operations, the de-scoped Dress Rehearsal requirements, as well as any clarifying requirements from those operations planned for Dress Rehearsal. We did deliver the final change requirements for Address Canvassing (the first major Census operation that Harris is participating in) by November 30, and in early December, negotiated with Harris to deliver final requirements by January 16, 2008.

#### DEPARTMENT INFORMATION SYSTEMS

*Question.* For the last 7 years, the Inspector General has noted that the Department has a material weakness in its information technology (IT) security because of problems with its certification and accreditation (C&A) process. I understand that several Department systems have recently been compromised.

What is the Department doing to improve the C&A process so the material weaknesses can be resolved?

*Answer.* Since fiscal year 2001 when the system certification and accreditation (C&A) material weakness was first reported, a deadline of one year was set for its resolution. Because of the short timeframes, efforts mainly focused on completing C&As instead of improving their quality. It is the poor quality of the C&A packages that caused the material weakness to continue. To that end, an OCIO/OIG joint strategy has been developed to incorporate realistic milestones, take measurable steps, and build consistent and repeatable C&A practices. We have established a 24-month schedule to meet these commitments, with the following significant milestones:

- Standard assessment cases can promote consistency and improved security for the Department's IT systems. Bureaus will use the examples to develop system specific assessment cases that will be used during security control assessments associated with certification and continuous monitoring by May 2008.
- The C&A package documents the security posture of a system as a snapshot in time, but continuous monitoring must be performed to ensure that appropriate adjustments are made to security controls and the system security plan as changes to the information system and external environment occur. OCIO will develop Department-wide continuous monitoring policy and guidance to help achieve consistency and compliance. The planned completion date for this guidance is June 2008. As part of its independent Federal Information Security Management Act (FISMA) reviews of C&A packages and security control assessments, OIG will identify controls that have not been adequately assessed and recommend that they be assessed during continuous monitoring. OIG will later review continuous monitoring activities for those systems to determine whether appropriate actions were taken. OIG will also assess compliance with the continuous monitoring policy and guidance when it becomes available. This work will be performed on an ongoing basis as part of our fiscal year 2008 and fiscal year 2009 FISMA reviews.
- The Information Systems Security Line of Business (ISSLoB) initiative requires that agencies use a designated FISMA automated tool to standardize tracking and reporting. The Department has begun to implement the Justice Department's Cyber Security Assessment and Management (CSAM) tool to standardize the C&A process and documentation as well as conduct compliance reviews. CSAM will be implemented in two phases—the management information inventory phase, which will provide consistent security records for IT investments, is scheduled for September 2008; full implementation, including conversion of existing packages, is scheduled for June, 2009.
- IT security compliance is one of the Department's highest priorities. To ensure this effort is on track, both OCIO and OIG will brief progress at the Department's Senior Management Council (SMC) on a quarterly basis. We will also brief the CIO Council on a quarterly basis.

*Question.* The Inspector General recently reported that only 1 of the 16 system security officers at Census is an IT security specialist. What are you doing to ensure there are enough qualified IT security professionals to protect the Department's many sensitive systems and to oversee the work of its IT security contractors?

*Answer.* The attraction and retention of experienced IT Security Officers is a challenge. The insufficient number of individuals proficient in IT security has been raised in various government and private-sector organizations. Experienced IT security professionals are not easy to come by, and the Department must compete in the market place for these skills.

In 2007, the Departmental CIO worked with Office of the Secretary Information Technology Review Board, CIO Council, and Commerce Information Technology Review Board. Discussions regarding the increasing threat environment and escalating requirements resulted in an increase in the fiscal year 2009 budget for IT security. Part of this budget is set aside to address training and certification of our IT security personnel.

Census continues to actively address building a robust IT security staff. The Census Bureau has taken steps to address this problem area by supplementing its limited staff resources through the use of highly qualified contractors. These additional skilled resources, together with the adoption of new and improved processes, have resulted in a great improvement in the Census Bureau's ability to assist the system owners, authorizing officials, and Information System Security Officers (ISSOs) in understanding and carrying out their information security responsibilities.

Over the past two years, we have seen a dramatic increase in security-related activity throughout the Federal government. Heightened threat levels, as well as a need to strengthen the overall IT security program, have led the Census Bureau to review its budget and consider future increases, as well as a plan of action to improve the Division Security Officer/Information System Security Officer (DSO/ISSO) program. The Census Bureau is considering options for significantly increasing staffing to support the IT Security Program. More specifically, the Census Bureau is studying ways to provide resources to the office so that it can provide more advice and guidance to senior executives and all other roles relating to IT security. This includes training and support to ensure that authorizing officials, system owners, and DSO/ISSOs are performing their roles properly.

Further, the Census Bureau hired MITRE Corporation to conduct an independent organizational assessment of the Census IT Security Office (ITSO). The assessment was to identify strengths as well as areas for improvement in the ITSO management, communications, processes, and structure. The analysis generally found that, despite many challenges in today's Federal IT security environment, the ITSO has significantly improved information security at the Census Bureau over the past few years. Based on MITRE's recommendations, the ITSO developed a five-year strategy to address the findings of the assessment and other gaps in the program, to include strengthening the role of the DSO/ISSO. The ITSO is currently conducting a gap analysis of the DSO/ISSO role structure and intends to recommend a plan of action to the Census Bureau Executive Staff in June 2008.

#### NOAA'S FLEET MODERNIZATION PLAN

*Question.* Mr. Secretary, over the past several years this Committee has supported and funded new Fisheries Survey Vessels for NOAA's fleet. These vessels provide a valuable service to this country, and the aging ships they replace deserve retirement. However, these fishery vessels represent only a fraction of NOAA's fleet. NOAA also has hydrographic and oceanographic research vessels, some of which are well past their prime. We need to do more to support the officers, crew and shore support staff that keep these vehicles working well past their prime.

When will this Committee receive a long-term fleet modernization plan that covers the entire NOAA fleet?

*Answer.* NOAA's Ship Recapitalization Plan has been drafted and is currently undergoing Administration clearance.

#### LAKE PONTCHARTRAIN

*Question.* A number of members have raised a concern about a lack of funding for the Lake Pontchartrain Restoration Program which would provide funding which would help restore and preserve the estuarine areas. Tell us whether this is a priority of NOAA and what NOAA is doing to assist Lake Pontchartrain.

*Answer.* The Lake Pontchartrain Restoration Program is important to NOAA. The current research conducted has provided NOAA a better understanding of the water quality, critical habitats, biological resources, and contaminant sediments, thus benefiting those living on the Lake's shores. These research and education efforts contribute to NOAA's priority of habitat conservation and restoration. NOAA recognizes the need for such projects as they preserve nursery habitats for fisheries and protect and buffers coastlines. In fiscal year 2008, NOAA will provide approximately \$500,000 to support the Lake Pontchartrain Restoration Program.



## QUESTIONS SUBMITTED BY SENATOR TED STEVENS

## FISHERIES RESEARCH AND MANAGEMENT FUNDING LEVELS

*Question.* I have heard from fishermen in my state with concerns about the level of NOAA funding for Fisheries Research and Management in the fiscal year 2008 omnibus. Effective management of our fisheries depends on sound science.

Will funding in the fiscal year 2009 budget allow for the stock surveys necessary to ensure sustainable management of Alaska's fisheries and the fisheries of the nation?

*Answer.* Based on the fiscal year 2009 President's request, we estimate that we would allocate \$57.1 million for the Alaska Fisheries Science Center (AFSC), an increase of \$2.7 million compared to the fiscal year 2008 level. In addition, the 2009 President's request restores funding for core survey and monitoring activities that were not included in the passage of the 2008 enacted budget.

While additional funds for survey activities may be available, due to increased charter and fuel costs, it is unlikely that the total cost of all bottom trawl and acoustic surveys needed in fiscal year 2009 will be realized. The AFSC would prioritize the acoustic surveys for pollock, and the Bering Sea bottom trawl surveys as top priorities. Restoration of the Aleutian Islands survey, cancelled in fiscal year 2008, would not be possible at the 2009 funding levels. Likewise, the Gulf of Alaska slope survey would be cancelled and a portion of the Gulf of Alaska shelf survey would likely be scaled back.

## MSRA IMPLEMENTATION—IUU

*Question.* Can you give me an update on the progress the Department is making toward implementing the provisions of the Magnuson-Stevens Act, specifically with respect to ending overfishing and addressing the problem of illegal, unreported, and unregulated (IUU) fishing?

*Answer.* Under the international provisions of the MSRA, the Secretary of Commerce is required to take action to combat illegal, unreported, or unregulated (IUU) fishing activities. The fiscal year 2009 President's budget request includes a total request of \$2.6 million for international cooperation and assistance activities to combat IUU fishing. Of this amount, \$1.5 million is for consultation with nations that have been identified as having vessels engaged in IUU fishing and engage in capacity building activities with developing countries. The above figure also includes \$1.1 million for the Law Enforcement program to support the MSRA requirement to strengthen international fisheries enforcement by providing additional infrastructure and personnel to monitor imports of fish and fish products into the United States through collaboration with enforcement entities in other federal agencies and foreign governments. Furthermore, the Secretary of Commerce is required to produce a biennial report to Congress which lists countries the United States has identified as having vessels engaged in IUU fishing and to certify whether identified nations have taken appropriate corrective action to warrant receipt of a positive certification. The absence of steps to address these IUU fishing activities may lead to prohibitions on the importation of certain fisheries products into the United States and other measures.

In January 2008, the NMFS Office of International Affairs released a progress report on the status of implementation of the MSRA international provisions. This report summarizes efforts to combat IUU fishing around the world and can be found at <http://www.nmfs.noaa.gov/msa2007/>.

In preparation for the first biennial report, which is due to Congress in January 2009, NMFS has begun to collect information the agency can use to identify nations engaged in IUU fishing activities. To help acquire this information, on March 21, 2008, NMFS published a notice in the Federal Register that solicited information from the public regarding nations whose vessels are engaged in IUU fishing and bycatch of protected resources. The information request has been circulated broadly within constituent groups.

NMFS is drafting a proposed rule for the identification and certification of nations whose vessels are engaged in IUU fishing or bycatch of protected living marine resources. We hope to have the rule available for public comment this summer. In preparation for the development of the proposed rule, NMFS published an Advanced Notice of Proposed Rulemaking in June 2007, and the agency held several public meetings in July 2007 to solicit public comments on this process.

NMFS is also undertaking projects that will address IUU fishing and bycatch of protected living marine resources all around the world, with a focus at present on Central America and West Africa. These projects include workshops to provide technical assistance on the adoption of bycatch mitigation technologies and to improve

enforcement. The enforcement activities focus on the development of effective legal frameworks and the implementation of improved monitoring, control and surveillance (MCS) programs.

The United States continues to serve as Chair of the international MCS Network. In addition, we are also continuing to collaborate with various countries to address pelagic longline sea turtle bycatch through the use of circle hooks and we have collaborated with the U.S. Navy in partnership programs aimed at providing development assistance in Latin America and West Africa.

The NOAA Office of Law Enforcement (OLE) is working closely with enforcement entities, with other federal agencies and foreign governments, to gather intelligence data on IUU fishing activities and trade in IUU fish and fish products. NOAA OLE is also developing its capability to analyze this intelligence data to create intelligence-based products to improve the detection and intercept IUU fish product entering the United States.

#### ENDANGERED SPECIES LISTINGS IN ALASKA

*Question.* I am concerned about Endangered Species Act petitions for species in Alaska. In addition to the current listings for Stellar Sea Lions, there are proposed listings for Cook Inlet Beluga Whales and ribbon seals before the Department of Commerce. Decisions on these listing could have huge consequences for development in my state.

Would increased funding for research in this area improve NOAA's ability to make scientifically supported decisions on these listings?

Answer. NOAA must render an ESA listing decision based on the best available scientific and commercial data information. More research will likely reduce scientific uncertainty and assist NOAA's ability to determine how to recover the species if they are listed.

#### ECONOMIC DEVELOPMENT ADMINISTRATION FUNDING

*Question.* The President's fiscal year 2008 budget includes a 51 percent decrease in funding for the Economic Development Administration. How will this reduction impact the Department's ability to assist economically distressed communities?

Answer. EDA will maintain its mission to "lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy," to the best of its ability, regardless of EDA's budget funding levels. The agency will continue to assist distressed communities through its grant investments and the agency's "soft assets" such as sharing best practices and technical expertise with communities.

The fiscal year 2009 funding request is based on budget priorities to help balance the federal budget. In a difficult budget environment, the Administration has made tough choices. EDA has a flexible and scalable nature—we can "ramp up" operations, as well as "ramp down" based on available funds.

#### DIGITAL TRANSITION

*Question.* As the nation prepares for the transition to digital television, I am concerned that there is no focus on the special needs of rural American when implementing the converter box program. I am particularly concerned that customers are not being properly educated about needing a pass through converter box if their communities rely on low power or translators for their broadcasting.

What is the National Telecommunications and Information Administration doing to address this concern?

Answer. To minimize confusion to viewers of low-power stations, NTIA has been working closely with organizations representing low-power and translator stations to communicate effective messages to consumers. First, the materials consumers receive in the envelope with their coupons identify which converter boxes will pass through analog signals. This information enables consumers to determine on their own which retail outlets stock these analog pass through boxes. Second, NTIA has added information about the low-power issue to list of Frequently Asked Questions (FAQs) on the Coupon Program website [www.DTV2009.gov](http://www.DTV2009.gov). This information includes a list of low-power and translator stations by location to help consumers determine, first, whether they receive service from one of these stations and, if so, whether they need to consider purchasing a pass through converter box. NTIA also identifies other options for viewers of low-power and translator stations, such as buying a low-cost splitter, which enables viewers to use any of the certified converter boxes to view programs broadcast in analog and digital.

NTIA is also working expeditiously to ensure that low-power operators in rural areas have resources to assist them with the transition in a timely fashion. On

March, 5, 2008, NTIA sent a letter to all licensees of Class A, low-power and translator stations with a fact sheet they could use to inform their viewers about the digital transition. The letter also included information about the Coupon Program and listed of all approved converter boxes that included analog pass through.

The letter also included additional information about two NTIA grant programs to assist low-power facilities. The Low-Power Television and Translator Digital-to-Analog Conversion Program currently provides \$1,000 to eligible low-power stations that must purchase a digital-to-analog conversion device to convert the incoming digital signal of a full-power television station to analog for transmission on the low-power station's analog channel. To date, NTIA has awarded 232 grants under this program. Applications will be accepted until February 17, 2009.

Of course, stations that operate at less than full power will eventually convert to digital broadcasts. The Low-Power Television and Television Translator Upgrade Program established by Congress directs NTIA to assist this effort through a program that provides \$65 million for necessary equipment upgrades to stations in eligible rural communities. To implement this program in a timely manner, a technical correction to the program authorization is required to permit the agency to begin making funds available during fiscal year 2009. On April 24, 2008, the Senate Committee on Commerce, Science, and Transportation favorably reported S. 2607, which would effectuate this technical correction. NTIA will continue to work with the Federal Communications Commission, industry and the broadcast community to assist low-power television stations and their viewers during the transition to digital broadcasting.

#### SUBCOMMITTEE RECESS

Senator MIKULSKI. The subcommittee stands in recess until Thursday, March 13, at 10 a.m., when we will take testimony from the Administrator of the National Oceanic and Atmospheric Administration (NOAA) and the Director of the National Science Foundation (NSF).

[Whereupon, at 11:14 a.m., Thursday, March 6, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 13.]